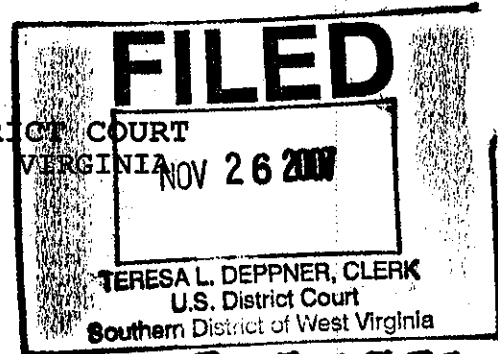


IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA



Jimmy O'Neal Brown

Plaintiff

vs.

West Virginia Crime Lab, Sgt Timothy
Grady White, U.S. Attorneys Office,
Southern District W. Va., Rebecca
Betts, U.S. Attorney, John File,
A.U.S. Attorney

Defendants

Civil Action No. **5:07-0758**

COMPLAINT

By a Federal Prisoner

I, Jimmy O'Neal Brown, *PRO SE*, do bring forth this civil action against above named defendants pursuant to 403 U.S. 388 (1971) Bivens vs. six unknown agents, and hereby swear that all facts and statements herein are true and correct to the best of my knowledge.

Statement of Facts

- 1) On July 12, 1998, Plaintiff was arrested for possession of a Schedule II controlled substance due to a field test by W. Va. State Troopers.
- 2) On August 11, 1998, All charges were dropped for possession of amphetamines and I was released from custody. (Emphasis Added)
- 3) On January 19, 1999, Plaintiff was rearrested and charged with possession of Meth Amphetamines from the July 12, 1998 arrest.
- 4) In May 1999, The W. Va. Supreme Court ordered the State Crime Lab to undergo another investigation 'into' fraud and mishandling evidence, this is the same crime lab that was in charge of testing the drugs in my arrest. More specifically, that Trooper Timothy Grady White was one of the lab employees being investigated for fraud and mishandling of evidence. Trooper Timothy Grady White is also the one who tested the drugs in my case. (see Exhibit "A") The U.S. Attorneys office did not at this time or at any other time before,

during, or after my trial, inform myself or my attorney of this or prior investigations, despite several requests for evidence. (Emphasis Added)

- 5) On May 16, 1999, Plaintiff enacted plea in the above case, but subsequently withdrew my plea to pursue other representation.
- 6) Without knowledge of Crime Lab faults, my attorney E.L. Morgan Esq., and myself went forward with my case by requesting discovery. (see Exhibit "B", Docket)
- 7) Between October 15, 1999, and October 22, 1999, Plaintiff received three responses to discovery and still no notification of this or any other Crime Lab investigation was provided to Plaintiff or his counsel.
- 8) On October 28, 1999, still without being informed about the Crime Lab, under the advice of my attorney, (E.L. Morgan) the Plaintiff Pled Guilty and stipulated to the crime lab report by Trooper White that the substance was Meth Amphetamine.
- 9) On January 12, 2000, still without knowledge of the Crime Lab Investigation, the plaintiff was sentenced to 188 months by Judge David Faber, whom himself never informed the Court as to the Investigation of the Crime Lab.
- 10) The Plaintiff is not a chemist, does not use Meth Amphetamines, and was never allowed to test the substance in this case and solely pled guilty because of the Crime Lab's report.
- 11) On September 15, 2000, sixteen months after W. Va. Supreme Court ordered an investigation of the Crime Lab, the Plaintiff was informed by a letter from U.S. Attorney Rebecca Betts as to the problems at the Crime Lab. Wherein, "The United States is undertaking efforts to have any drug related evidence... retested by a laboratory independent of the W. Va. State Police Lab." (see Exhibit "C")
- 12) On October 6, 2000, Plaintiff filed, through counsel (E.L. Morgan) to retest the substances related to the instant offense. (see Exhibit "B")
- 13) On October 31, 2000, Plaintiff received from U.S. Attorney John File a Letter of Intent to retest the substances related to the instant offense. (see Exhibit "C")

- 14) Over the next few years, numerous attempts by plaintiff to receive the results of the retest have moved no court to order the results to be provided. (See Exhibit "B") All avenues have been exhausted, save to bring forth this Bivens Civil Action to seek relief.
- 15) Further, the plaintiff requested by FOIA for the results of Lab Investigation. (Exhibit "D")

Claim

- 1) The West Virginia Crime Lab, during years of mishandling evidence and having other irregularities in procedure, did make it impossible to receive a fair trial as guaranteed by the 4th Amendment.
- 2) Sergeant Timothy White, did willfully, as an employee of the Lab, along with civilian co-workers, skip procedure, falsified documents and created other irregularities within the Crime Lab. This made it impossible to receive a fair trial and denied Plaintiff Liberty which is in violation of the 4th and 8th Amendments.
- 3) *U.S. Attorneys Rebecca Betts and John File, through criminal neglect bordering on malfeasance did violate both the 4th and 8th Amendments by willfully withholding discovery of the problems of the Crime Lab from both the Plaintiff and the Courts, which created a miscarriage of justice, in not informing the Plaintiff of this or other previous investigations of this specific Crime Lab and refusing to supply the results of the retest. This has caused undue suffering and loss of liberty along with denying due process of the law. (Emphasis Added)*

Relief

- 1) That this Honorable Court order the results of the retest be given to the Plaintiff.
- 2) That if no retest was done, that this Honorable Court set aside conviction until a proper retest can be completed and verified, and order a retest of the substances related to the instant offence.

- 3) That an investigation be ordered into the U.S. Attorneys Office of the Southern District of West Virginia's about Legal System (i.e. Discovery Motions) be forth coming.
- 4) That both Rebecca Betts and John File of the same U.S. Attorney's Office be held accountable in their professional capacities for violation of Civil Rights Violations against this Plaintiff.
- 5) That the Plaintiff be awarded monetary damages no less than (2) Two Million Dollars (U.S.) for Actual damages and (1) One Million Dollars U.S. in Punitive damages.
- 6) That this Court Grant the Plaintiff Immediate Release from Custody for the Duration of all Legal Proceedings.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 31 day of Oct, 2007.

Jimmy O'Neal Brown
Jimmy O'Neal Brown #05742-088, Plaintiff, PRO SE
Federal Correctional Institute
P.O. Box 340 (1BL-125)
Salters, S.C. 29590



FORENSIC LABORATORY



725 Jefferson Road, Sou

TFC O. L. AYERS
B.C.I. WV STATE POLICE
P. O. BOX 7285
SPRAGUE, WV 25926

Ju.

Post-it Fax Note	7671	Date	7/31/98	# of pages	1
To	John F. Ie	From	O. L. Ayers		
Co./Dept.	U.S. ATF	Co.			
Phone #		Phone #	256-6725		
Fax #		Fax #	256-6714		

This examination has been made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation or a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

REFERENCE:

Jimmy Brown - Suspect
Susan Boyd - Suspect

Drugs - 07/12/98

EVIDENCE RECEIVED:

07/21/98 via personal delivery
by TFC. O. L. Ayers

EVIDENCE DISPOSITION:

Enclosed

EXAMINATION REQUESTED:

Drug Analysis

SPECIMENS:

Item #1: One plastic bag containing burnt hand rolled cigarettes

Item #2: One plastic bag containing white chunk material

Item #3: Three plastic bags containing tan powder

RESULTS OF EXAMINATION:

Item #1, weighing approximately 0.76 gram, contains marihuana, a Schedule I controlled substance.

Item #2, weighing approximately 11.7 grams, contains cocaine, a Schedule II controlled substance.

Item #3, weighing a total of approximately 50.9 grams, contains 22.6g methamphetamine, a Schedule II controlled substance.

Sincerely,

T. G. White

T. G. White, Trooper
Forensic Chemist

Exhibit

A

APPEAL, CLOSED, Jackson, LC-2

**United States District Court
Southern District of West Virginia (Beckley)
CRIMINAL DOCKET FOR CASE #: 5:98-cr-00189-1**

Case title: USA v. Brown, et al
Magistrate judge case number: 6:98-mj-00094

Date Filed: 11/10/1998

Assigned to: Chief Judge David A.
Faber

Defendant

Jimmy O'Neal Brown (1)
TERMINATED: 01/13/2000

represented by **E. Lavoyd Morgan, Jr.**
BARRY L. BRUCE & ASSOCIATES
P. O. Box 388
Lewisburg, WV 24901
304/645-4182
Fax: 645-4183
TERMINATED: 01/13/2000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Edward H. Weis
FEDERAL PUBLIC DEFENDER'S
OFFICE
Room 3400
300 Virginia Street East
Charleston, WV 25301
304/347-3350
Fax: 347-3356
TERMINATED: 01/13/2000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Public Defender or
Community Defender Appointment

Jimmy O'Neal Brown
FCI ESTILL
100 Prison Road
P. O. Box 699
Estill, SC 29918
TERMINATED: 01/13/2000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Exhibit
B

Tracy Lusk
200 1/2 S. Walker St.
Princeton, WV 24740
304/431-3333
TERMINATED: 08/06/1999
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

21:841(a)(1) CONTROLLED
SUBSTANCE - SELL, DISTRIBUTE,
OR DISPENSE a quantity of
methamphetamine and cocaine,
Schedule II controlled substances and
18:2 AIDING AND ABETTING
(1)

Disposition

The deft. is committed to the custody of
the US BOP for a 188 month term of
imprisonment; following his term of
incarceration, deft. shall remain on
supervised release for 5 yrs.; deft. is
assessed .00 and fined ,000.00

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Plaintiff

United States of America
TERMINATED: 01/13/2000

represented by **Michael H. Spencer**
U. S. ATTORNEY'S OFFICE
P. O. Box 1713
Charleston, WV 25326-1713
304/345-2200
Fax: 347-5104
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Miller A. Bushong, III
U. S. ATTORNEY'S OFFICE
P. O. Box 1713
Charleston, WV 25326-1713

304/345-2200
 Fax: 347-5104
 TERMINATED: 01/13/2000
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/09/1998		PROBATION OFFICER ASSIGNED as to Jimmy O'Neal Brown PRETRIAL SERVICES: Peggy Adams; PRESENTENCE INVESTIGATION: UNASSIGNED. (slr) Modified on 12/02/1998 (Entered: 11/12/1998)
11/10/1998		ARREST WARRANT issued as to Jimmy O'Neal Brown (Warrant issued 10/21/98) (cds) Modified on 11/18/1998 (Entered: 11/18/1998)
01/10/1999		SPECIAL ASSESSMENT PAYMENT RECEIVED as to Jimmy O'Neal Brown : \$100.00 RECEIVED, RECEIPT NUMBER 074947. cc: U.S. Attorney; U. Probation. (rle) (Entered: 01/11/2000)
01/28/1999	18	PETITION/ORDER directing the Clerk to issue a WHCAP as to Jimmy O'Neal Brown returnable 2/23/99 at 2:30 p.m.. (Signed by Magistrate Judge Jerry D. Hogg) cc: defendant and counsel; USA; USM; USP; Judge (slr) (Entered: 01/29/1999)
01/28/1999		WRIT of Habeas Corpus ad Prosequendum issued and delivered to USM as to Jimmy O'Neal Brown for 2/23/99. (slr) (Entered: 01/29/1999)
01/29/1999	19	WRIT of Habeas Corpus ad Prosequendum returned unexecuted on 1/29/99 as to Jimmy O'Neal Brown; subject taken into federal custody on 1/27/99 in D/SC. (slr)
01/29/1999		ARREST of Jimmy O'Neal Brown in of South Carolina (cds) (Entered: 02/08/1999)
02/08/1999	22	ARREST WARRANT RETURNED EXECUTED as to Jimmy O'Neal Brown on 1/29/99 (cds)
02/08/1999	23	RULE 40 DOCUMENTS as to Jimmy O'Neal Brown received from District of South Carolina; Magistrate Case number: 4:99-156 consisting of (1) Rule 40 Worksheet (2) Waiver of Rule 40 Hearing (3) Commitment to Another District (4) Financial Affidavit (5) Docket Sheet from District of South Carolina (cds)
02/22/1999	24	ORDER as to Jimmy O'Neal Brown cancelling arraignment presently scheduled for 2/23/99 at 2:30 p.m. in Beckley; arraignment will be continued generally until notification from USMS that defendant has arrived in SDWV cc: defendant's counsel; USA; USM; USP by regular mail & FAX; Judge (Signed by Magistrate Judge Mary S. Feinberg) (mjp) Modified on 02/22/1999
02/25/1999	25	ORDER as to Jimmy O'Neal Brown rescheduling Arraignment for 3:00 p.m., 3/2/99, in BECKLEY, for Jimmy O'Neal Brown cc: defendant and

		counsel; USA; USM; USP; Judge (Signed by Magistrate Judge Mary S. Feinberg) (slr)
03/02/1999		ARRAIGNMENT as to Jimmy O'Neal Brown held (Magistrate Judge Mary S. Feinberg ; Court Reporter: Electronic) (slr)
03/02/1999	26	ARRAIGNMENT ORDER AND STANDARD DISCOVERY REQUESTS: Upon Hearing Held 3/2/99; deft. entered PNG to Indictment; trial set to a jury on 9:30 a.m., 5/4/99, in BECKLEY; pretrial hearing on motions set 1:30 p.m., 4/12/99, in BLUEFIELD before Judge David A. Faber; deft did not execute a waiver of right to be present at the hearings on motions prior to trial; deft was detained ; Standard Discovery Request Form executed; govt's responses to deft's standard discovery requests due 3/12/99; reciprocal discovery and filing of additional motions by deft due w/in 10 days of receipt of the requested materials and filing of the govt's written response to deft's discovery requests; jury questionnaires for the petit on the current panel shall be made available to each party for inspection and copying. (signed by Magistrate Judge Mary S. Feinberg) (cc: deft and counsel, USA, USM, USP; Judge; Jury Clerk) (slr)
03/02/1999	27	ORDER as to Jimmy O'Neal Brown, continuing the Detention Hearing until 10:30 a.m., 3/5/99, in BECKLEY, for Jimmy O'Neal Brown cc: defendant and counsel; USA; USM; USP; Judge (Signed by Magistrate Judge Mary S. Feinberg) (slr)
03/05/1999		DETENTION HEARING as to Jimmy O'Neal Brown held (Magistrate Judge Mary S. Feinberg ; Court Reporter: Electronic) (slr)
03/05/1999	28	WITNESS LIST as to Jimmy O'Neal Brown, RE: Detention Hrg. held 3/5/99 before Mag. Judge Mary Feinberg (slr)
03/05/1999	29	ORDER Upon detention hearing held 3/5/99 as to Jimmy O'Neal Brown; parties agreed that facts contained in the first 3 numbered sections of the Pretrial Services Report could be taken as proven for the purposes of the Detention hrg.; Court found that no condition or combination of conditions would ensure the deft.'s appearance or the safety of any other person and the community; Deft. is detained pending trial. cc: defendant and counsel; USA; USM; USP; Judge (Signed by Magistrate Judge Mary S. Feinberg) (slr)
03/05/1999	30	ORDER OF DETENTION PENDING TRIAL as to Jimmy O'Neal Brown ; remanding defendant to custody of U.S. Marshal. (Signed by Judge Mary S. Feinberg) cc: defendant and counsel; USA; USM; USP; Judge (slr)
03/17/1999	31	SEALED (mjp)
03/17/1999	32	SEALED (mjp)
03/17/1999	33	RESPONSE by USA to deft's Standard Discovery Requests and REQUEST by USA for Reciprocal Discovery. (slr)
03/18/1999	34	PROBATION OFFICER ASSIGNMENT/SUPERVISION FORM as to

		Jimmy O'Neal Brown ; PROBATION OFFICER: ADAMS; Type of Assignment: PRETRIAL SERVICES. (cds) (Entered: 03/25/1999)
04/09/1999	35	ORDER as to Jimmy O'Neal Brown cancelling pretrial motions hearing scheduled 4/12/99 at 1:30 p.m., in Bluefield cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp)
04/13/1999	36	ORDER as to Jimmy O'Neal Brown, set Plea Hearing Deadline for 11:00 5/3/99 for Jimmy O'Neal Brown , in BECKLEY cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp)
04/13/1999	37	MOTION by USA as to Jimmy O'Neal Brown to Schedule Guilty Plea Hearing (slr)
05/03/1999		COURTROOM MEMO as Jimmy O'Neal Brown (parties appeared for plea hearing and defendant informed court that he no longer intends to plead guilty) (mjp) (Entered: 05/04/1999)
05/04/1999	40	ORDER Upon hearing held 5/3/99 as to Jimmy O'Neal Brown, reset Jury Trial for 9:30 5/11/99 for Jimmy O'Neal Brown in BECKLEY, reset Pretrial Motions Hearing for 9:00 5/10/99 for Jimmy O'Neal Brown in BLUEFIELD, to Continue in Interests of Justice Time Excluded from 5/3/99 to 5/11/99 cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp)
05/04/1999	41	ORDER as to Jimmy O'Neal Brown directing Probation Office to deliver to counsel for both sides criminal history portion of Pretrial Services Report on defendant cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp)
05/05/1999	43	ORDER as to Jimmy O'Neal Brown granting [37-1] motion to Schedule Guilty Plea Hearing as to Jimmy O'Neal Brown, reset Plea Hearing Deadline for 1:00 5/6/99 for Jimmy O'Neal Brown , in BLUEFIELD cc: defendant's counsel; USA; USM; USP by mail & FAX; Judge (Signed by Judge David Faber) (mjp)
05/06/1999		PLEA HEARING as to Jimmy O'Neal Brown held (Judge David Faber; Court Reporter: Teresa Anderson) Jimmy O'Neal Brown count 1 (mjp)
05/06/1999	44	WRITTEN GUILTY PLEA Jimmy O'Neal Brown count 1 (mjp)
05/06/1999	45	LETTER-FORM PLEA AGREEMENT as to Jimmy O'Neal Brown (cc:USP) (mjp)
05/06/1999	46	LETTER as to Jimmy O'Neal Brown from USA addressed to Tracy B. Lusk, Esquire, dated 5/6/99, re: <u>sentencing issues</u> . (mjp)
05/07/1999	47	ORDER Upon hearing held 5/6/99 as to Jimmy O'Neal Brown, set Sentencing for 2:00 7/19/99 for Jimmy O'Neal Brown ; defendant is currently incarcerated and will remain so until sentencing cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp)
05/14/1999	48	PROBATION OFFICER ASSIGNMENT/SUPERVISION FORM as to Jimmy O'Neal Brown ; PROBATION OFFICER: Taylor; Type of

		Assignment: Presentence Investigation. (slr)
07/13/1999	49	ORDER reset Sentencing for 1:30 9/13/99 in BECKLEY for Jimmy O'Neal Brown (cc: defendant's counsel; USA; USM; USP; Judge and E. Lavoyd Morgan, Jr., Esq.) (Signed by Judge David Faber) (arb)
08/06/1999	50	ORDER SUBSTITUTING COUNSEL: defendant advised Court that he has retained E. Lavoyd Morgan, Jr., Barry L. Bruce and Associates to represent him and it is ORDERED that E. Lavoyd Morgan, Jr. be substituted as Counsel of record for said defendant (Signed by Judge David Faber) cc: defendant and counsel; USA; USM; USP; Judge (mjp)
09/10/1999	51	MOTION by Jimmy O'Neal Brown to Continue Sentencing (arb)
09/10/1999	52	ORDER granting [51-1] Defendant's Motion to Continue Sentencing reset Sentencing for 1:00 9/27/99 in BECKLEY for Jimmy O'Neal Brown (cc by mail & fax: Defendant's counsel; USA; USM; USP; Judge) (Signed by Judge David Faber) (arb)
09/15/1999	53	TRANSCRIPT as to Jimmy O'Neal Brown for Plea Hearing held 5/6/99, before Judge David Faber. Court Reporter: Teresa Anderson. (slr)
09/27/1999	54	MOTION by Jimmy O'Neal Brown to Withdraw Plea of Guilty (mjp)
09/27/1999		MOTION HEARING as to Jimmy O'Neal Brown re: [54-1] motion to Withdraw Plea of Guilty held (Judge David Faber ; Court Reporter: Teresa Anderson) (cds)
09/27/1999	55	WITNESS LIST by Jimmy O'Neal Brown, USA (cds)
09/27/1999	56	Exhibit list by Jimmy O'Neal Brown, USA w/govt's exhibits 1 & 2 attached (cds)
09/27/1999	57	ORDER as to Jimmy O'Neal Brown granting [54-1] motion to Withdraw Plea; scheduled Jury Trial for 9:30 10/26/99 in Beckley. cc: defendant and counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (cds) (Entered: 09/28/1999)
09/28/1999	58	RESPONSE by USA as to Jimmy O'Neal Brown's [54-1] Motion to Withdraw Plea of Guilty (slr)
10/15/1999	60	FIRST SUPPLEMENTAL RESPONSE by USA to Standard Discovery Requests from defendant Jimmy O'Neal Brown . (slr)
10/18/1999	61	TRANSCRIPT as to Jimmy O'Neal Brown for Motion to Withdraw Plea held 9/27/99, before Judge David Faber. Court Reporter: Teresa Anderson (slr)
10/20/1999	62	SECOND SUPPLEMENTAL RESPONSE by USA to Standard Discovery Requests from defendant Jimmy O'Neal Brown . (slr)
10/20/1999	63	REQUEST by Jimmy O'Neal Brown for issuance of subpoena for Trooper Holster returnable 10/22/99 9:30 a.m. BK. (cds) (Entered: 10/21/1999)

10/21/1999	64	MOTION by Jimmy O'Neal Brown to Suppress Evidence with request that an evidentiary hearing be scheduled. (cds) Modified on 10/21/1999
10/21/1999	65	ORDER as to Jimmy O'Neal Brown, set Pretrial Motions Hearing for 9:30 10/22/99 for Jimmy O'Neal Brown , in BECKLEY cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp) (Entered: 10/22/1999)
10/22/1999	66	THIRD SUPPLEMENTAL RESPONSE by USA to Standard Discovery Requests from defendant Jimmy O'Neal Brown . (slr)
10/22/1999		MOTION HEARING as to Jimmy O'Neal Brown re: [64-1] motion to Suppress Evidence held (Judge David Faber ; Court Reporter: Teresa Anderson) (cds)
10/22/1999	67	WITNESS LIST by USA as to Jimmy O'Neal Brown (cds)
10/22/1999	68	Exhibit list by USA as to Jimmy O'Neal Brown w/exhibits attached (cds)
10/25/1999	70	RESPONSE by USA as to Defendant Jimmy O'Neal Brown's [64-1] motion to Suppress Evidence (rle)
10/25/1999	71	ORDER: Upon hearing held 10/22/99 as to Jimmy O'Neal Brown denying [64-1] motion to Suppress Evidence. cc: defendant and counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (rle)
10/25/1999		PLEA HEARING as to Jimmy O'Neal Brown held (Judge David Faber ; Court Reporter: Teresa Anderson) Jimmy O'Neal Brown (Deft 1) as to Count 1 (rle)
10/25/1999	72	LETTER as to Jimmy O'Neal Brown from USA addressed to E. Lavoyd Morgan, dated 10/22/99, re: Confirmation of discussion held with counsel and defendant regarding defendant's proposed plea. (rle)
10/25/1999	73	WRITTEN GUILTY PLEA Jimmy O'Neal Brown (Deft 1) as to Count 1 (rle)
10/25/1999	74	LETTER-FORM PLEA AGREEMENT as to Jimmy O'Neal Brown (cc:USP) (rle)
10/25/1999	75	TRANSCRIPT as to Jimmy O'Neal Brown for Preliminary/Detention Hearing held 7/16/98, before Magistrate Judge Mary S. Feinberg . Court Reporter: Barbara Steinke (slr) (Entered: 10/26/1999)
10/28/1999	76	ORDER Upon plea hearing held 10/25/99 as to Jimmy O'Neal Brown; Deft. had previously tendered a guilty plea which the court provisionally accepted pending receipt of a PSIR; after preparation of the report, deft. obtained new counsel and moved to withdraw his guilty plea; 9/27/99, the court permitted deft. to withdraw his guilty plea; a suppression hrg. was held 10/22/99, resulting in the denial of deft.'s mtn. to suppress evidence; subsequently, deft. informed the court that he wished to change his plea to guilty pur. to a written plea agreement; court conditionally accepted deft.'s plea of guilty; court deferred final acceptance of the plea agreement and adjudication of guilt pending receipt of the amended

		PSIR; scheduling Sentencing for 11:00 a.m., 1/10/2000, in BECKLEY, for Jimmy O'Neal Brown ; directing the Probation Dept. to review its PSIR and submit an amended version to this court; remanding the deft. to the custody of the USMS. defendant and counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (slr)
01/10/2000		SENTENCING held (Judge David Faber ; Court Reporter: Teresa Anderson) Jimmy O'Neal Brown, Count 1 (slr) (Entered: 01/11/2000)
01/10/2000	77	WITNESS LIST by Jimmy O'Neal Brown (slr) (Entered: 01/11/2000)
01/10/2000	78	EXHIBIT LIST as to Jimmy O'Neal Brown and USA as to Jimmy O'Neal Brown (**Exhibits attached**) (slr) (Entered: 01/11/2000)
01/13/2000	79	JUDGMENT upon sentencing 1/10/00 Jimmy O'Neal Brown, Count 1: The deft. is committed to the custody of the BOP for a 188 month term of imprisonment; following his of incarceration, deft. shall remain on supervised release for 5 yrs.; deft. is assessed \$100.00 and fined \$5,000.00; deft. was remanded to the custody of the USMS; Sentenced within Guideline Range. (Signed by Judge David Faber) cc: defendant and counsel; USA; USM; USP; Judge (slr) (Entered: 01/14/2000)
01/13/2000	80	MEMORANDUM OF SENTENCING HEARING AND REPORT OF STATEMENT OF REASONS: Upon hearing held 1/10/00 as to Jimmy O'Neal Brown cc: defendant and counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (slr) (Entered: 01/14/2000)
01/13/2000		**CASE CLOSED as to Jimmy O'Neal Brown and Susan Jane Boyd (all defendants). (slr) (Entered: 01/14/2000)
01/14/2000	81	LETTER from Jimmy O'Neal Brown addressed to Clerk of Courts, dated 1/11/00, requesting copies of transcripts. (slr)
01/19/2000	82	NOTICE OF APPEAL by Jimmy O'Neal Brown from judgment order entered 1/13/00 and REQUEST FOR APPOINTMENT OF COUNSEL. (rle)
01/19/2000	83	TRANSMITTED Notice of Appeal to 4CCa as to Jimmy O'Neal Brown (cc: deft, attys) (rle)
01/21/2000	84	ORDER as to Jimmy O'Neal Brown: granting defendant permission to proceed on appeal in forma pauperis. cc: defendant and counsel; USA; Judge (Signed by Judge David Faber) (rle)
01/21/2000	85	TRANSMITTAL of Update to NOA (Pauper status granted) as to Jimmy O'Neal Brown (rle)
01/24/2000	86	SEALED -- PRESENTENCE REPORT. (rle)
02/03/2000	88	NOTICE of Lien for Fine/Restitution as to Jimmy O'Neal Brown issued (orig. and 1). (slr)
02/04/2000	89	ORDER FROM USCA as to Jimmy O'Neal Brown appointing E. Lavoyd Morgan, Jr. as counsel for the appellant. cc: defendant and counsel; USA; USM; USP; Judge () (cds)

02/04/2000	90	NOTICE OF DOCKETING ROA FROM 4CCA as to Jimmy O'Neal Brown Re: [82-1] appeal 4CCA Number: 00-4070 Case Manager: Taline Akseraylian (cds)
03/16/2000	91	LETTER as to Jimmy O'Neal Brown addressed to Clerk, dated 3/14/00, re: REQUEST FOR CERTIFICATE. (rle)
03/16/2000	92	CERTIFICATE by Clerk OF READINESS OF RECORD ON APPEAL as to Jimmy O'Neal Brown re: [82-1] appeal by Jimmy O'Neal Brown in 4CCA no. 00-4070 (rle)
03/16/2000	93	TRANSMITTAL OF UPDATE ITEM: re: Certificate of Readiness as to Jimmy O'Neal Brown (rle)
03/27/2000	94	ACKNOWLEDGMENT by 4CCA as to Jimmy O'Neal Brown for receipt of Certificate of Readiness on 3/22/00. (rle)
04/14/2000	96	TRANSCRIPT ORDER ACKNOWLEDGMENT from 4CCA, Appeal No. 00-4070 as to Jimmy O'Neal Brown , to Teresa Anderson Court Reporter . Transcript due 5/11/00. (rle)
04/14/2000	97	TRANSCRIPT PURCHASE ORDER by Jimmy O'Neal Brown (rle)
04/27/2000	98	REVISED TRANSCRIPT ORDER ACKNOWLEDGMENT from 4CCA, Appeal No. 00-4070 as to Jimmy O'Neal Brown , to Teresa Anderson Court Reporter . Transcript due 5/18/00. (rle)
05/12/2000	99	TRANSCRIPT as to Jimmy O'Neal Brown for Motions Hearing held 10/22/99, before Judge David Faber . Court Reporter: Teresa L. Anderson (slr) (Entered: 05/15/2000)
05/18/2000	100	TRANSCRIPT as to Jimmy O'Neal Brown for Disposition Hearing held 1/10/00, before Judge David Faber. Court Reporter: Teresa Anderson (mjp)
07/07/2000	102	LETTER as to Jimmy O'Neal Brown addressed to Clerk, USDC, dated 7/3/00, Requesting Supplemental Certificate of Readiness. (cds)
07/07/2000	103	SUPPLEMENTAL CERTIFICATE by Clerk OF READINESS OF RECORD ON APPEAL as to Jimmy O'Neal Brown re: [82-1] appeal by Jimmy O'Neal in 4CCA no. 00-4070 (cds)
07/07/2000	104	TRANSMITTAL OF SUPPLEMENTAL CERTIFICATE OF READINESS to US Court of Appeals. cc: deft., counsel (cds)
07/17/2000	105	ACKNOWLEDGMENT of Receipt of Supplemental Certificate as to Jimmy O'Neal Brown by 4CCA on 7/13/00. (slr)
09/12/2000		CLERKS NOTICE certifying and transmitting Certified Copies of Documents 72-76 (Volume 1) to Fourth Circuit Court of Appeals as to Jimmy O'Neal Brown ; [82-1] appeal 4CCA #: 00-4070 (Documents mailed per request of Julie Hall) (cds)
09/18/2000		ACKNOWLEDGMENT FROM USCA OF RECEIPT OF CERTIFIED COPIES OF DOCUMENTS 72-76 as to Jimmy O'Neal Brown (cds)

		(Entered: 12/12/2000)
10/06/2000	106	MOTION by Jimmy O'Neal Brown for Retesting of Drug-Related Evidence (slr)
10/23/2000	107	OPINION, 4CCA No. 00-4070, as to Jimmy O'Neal Brown, DISMISSING the Appeal (slr)
11/16/2000		Record on Appeal returned from U.S. Court of Appeals: [82-1] appeal in one volume of pleadings. (rle)
11/17/2000	108	JUDGMENT OF 4CCA (certified copy) as to Jimmy O'Neal Brown Re: [103-1] appeal, [92-1] appeal dismissing the appeal (rle)
02/06/2001	110	LETTER as to Jimmy O'Neal Brown from USA addressed to Ronald D. Lawson, dated 1/2/01, re: Special Assessment paid in full; US Atty's record closed (slr) (Entered: 02/07/2001)
03/01/2001	111	LETTER as to Jimmy O'Neal Brown addressed to Clerk of Court, dated 2/22/01, re: Request for transcript and and updated docket sheet (copy of letter forwarded to Teresa Anderson). (rle)
05/14/2001	112	MOTION by Jimmy O'Neal Brown under 28 U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. (Civil Action No: 5:01-0410) (slr)
05/14/2001	113	STANDING ORDER ENTERED MAY 7, 1999: (1) All Applications to proceed in forma pauperis in civil cases are referred to the Magistrate Judge for consideration pursuant to Title 28, United States Code, Section 636; the Clerk, upon written Order from the Magistrate Judge, shall return any deficient document as specified in the Order if there is a deficiency in accordance with the statute; (2) all civil actions filed by persons who are in custody and all civil actions by persons who are not incarcerated but which are filed pro se pursuant to Title 42, United States Code, Section 1983, Title 28, United States Code, Sections 2255, 2254, and 2241, or other federal statutes and all civil actions for judicial review of administrative determination under the Social Security Act are referred to the Magistrate Judge pursuant to Title 28, United States Code, Section 636; (3) all applications for an award of attorneys' fees from judicial review of administrative decisions under the Social Security Act and all applications for fees and other expenses under the Equal Access to Justice Act, Title 28, United States Code, Section 2412 (d), are referred to the Magistrate Judge. THIS CASE REFERRED as to Jimmy O'Neal Brown to Magistrate Judge Mary S. Feinberg (cc: attys, pro se parties, USM, USP, District Judge, Mag. Judge) (slr)
05/14/2001	114	NOTICE of Filing of 2255 Motion by Jimmy O'Neal Brown (cc: Judge Faber; Charles T. Miler, US Attorney; deft.) (slr)
06/05/2001	<u>115</u>	MOTION by Jimmy O'Neal Brown to Amend and Enlarge The Scope of his [112-1] motion under 28 U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. (Civil Action No: 5:01-0410) (cds)

06/25/2001	116	ORDER as to Jimmy O'Neal Brown granting [115-1] motion to Amend and Enlarge The Scope of his [112-1] motion under 28 U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody; the additional material offered by Movant is incorporated in his Motion (Civil Action No: 5:01-0410) cc: defendant and USA (Signed by Magistrate Judge Mary S. Feinberg) (slr)
07/24/2001	117	PROPOSED FINDINGS AND RECOMMENDATIONS of Magistrate Judge Mary S. Feinberg as to Jimmy O'Neal Brown Re: [112-1] motion under 28 U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by Person in Federal Custody. (Civil Action No: 5:01-0410). Proposing that the District Court find that Defendant's Motion and the files and records of the case conclusively show that Defendant is not entitled to relief and that an evidentiary hearing is not required. Recommending that the District Court deny Defendant's 2255 Motion, order its summary dismissal and cause Defendant to be notified. Motion no longer referred. Objections to F and R due by 8/10/01 (rle)
07/31/2001	118	REQUEST FOR STATUS REPORT by Jimmy O'Neal Brown (rle)
08/13/2001	119	SUPPORTING BRIEF AND OBJECTIONS by Jimmy O'Neal Brown to [117-1] Proposed Findings and Recommendations by Magistrate Judge Feinberg (slr)
10/19/2001	120	REQUEST by Jimmy O'Neal Brown for Status Report (slr)
10/19/2001		NOTE TO FILE: Forwarded copy of current docket sheet as to Jimmy O'Neal Brown, pursuant to def't.'s letter request for status report (slr)
11/06/2001	121	PRO SE MOTION by Jimmy O'Neal Brown to Compel Judgment on Motion for Re-Test (slr)
11/20/2001	122	GRAND JURY RETURN ORDER as to Jimmy O'Neal Brown, Susan Jane Boyd; Grand Jury No. 97-1 returned indictments 10/21/98. (signed by Magistrate Judge Jerry D. Hogg) (pdb)
01/09/2002	123	Copy of LETTER from 4CCA addressed to Jimmy O'Neal Brown, dated 1/7/02, re: failure of compliance w/rule 21 when filing his Writ of Mandamus. (rle)
01/14/2002	124	STANDING ORDER IN RE: REFERRAL OF CIVIL ACTION MATTERS TO MAGISTRATE JUDGES ENTERED DECEMBER 28, 2001, NUNC PRO TUNC DECEMBER 26, 2001: Pursuant to 28 USC 636, certain types of civil actions and certain types of motions in civil cases shall be referred to the divisions as follows: For Beckley and Bluefield, to Magistrate Judge R. Clarke VanDervort; for Charleston and Parkersburg, to Magistrate Judge Mary E. Stanley; for Huntington, to Magistrate Judge Maurice G. Taylor, Jr.; the types of motions referred in all civil actions are: (1) applications to proceed in forma pauperis; (2) discovery disputes; and (3) discovery issues that arise post-judgment, such as interrogatories in aid of execution, judgment debtor examinations, and motions to compel answers to suggestions; the types of civil actions referred for total pretrial management and/or proposed

		findings of fact and recommendations for disposition are: (1) Actions for judicial review of an administrative determination under the Social Security Act, including applications for award of attorneys' fees and expenses under the Social Security Act or the Equal Access to Justice Act; and (2) Actions filed by persons proceeding pro se, whether in custody or not, until such person is represented by counsel; this order supersedes prior standing orders and referral orders in pending cases, but prior rulings made thereunder remain the law of the particular case. THIS CASE REFERRED TO Magistrate Judge R. Clarke VanDervort. (cc: attys; any unrepresented party) (gan)
04/25/2002	<u>125</u>	MOTION by Jimmy O'Neal Brown for the Court to Take Judicial Notice (rle)
06/03/2002	<u>126</u>	MOTION by Jimmy O'Neal Brown to Supplement Pending [112-1] Motion under 28 U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by Person in Federal Custody. (Civil Action No: 5:01-0410) (slr)
06/21/2002	<u>127</u>	Copy of ORDER (4CCA) as to Jimmy O'Neal Brown: denying appellant's petition for rehearing and rehearing en banc. (rle)
01/02/2003	<u>128</u>	TRANSCRIPT as to Jimmy O'Neal Brown for Plea Hearing held 10/25/99, before Judge David Faber . Court Reporter: Teresa Anderson (rle) (Entered: 01/03/2003)
02/19/2003	<u>129</u>	LETTER from Jimmy O'Neal Brown addressed to Clerk, U. S. District Court, dated 2/13/03, re: Status of Motion to Retest Drugs. (slr)
02/19/2003		NOTE TO FILE: Mailed current copy of docket sheet as to Jimmy O'Neal Brown to Deft. pursuant to letter request. (slr)
03/06/2003		COURT PROCEEDING - Initial Appearance on Revocation Petition; JUDGE VanDervort; COURT REPORTER Electronic (slr)
03/11/2003		COURT PROCEEDING PRELIMINARY/DETENTION HEARING; JUDGE VanDervort; COURT REPORTER Electronic (slr)
01/08/2004	<u>146</u>	LETTER from Jimmy O'Neal Brown addressed to Clerk, U. S. District Court, Requesting Status of 2255 and Requesting Copy of Docket Sheet. (slr)
01/08/2004		NOTE TO FILE: Copy of docket sheet forwarded to Jimmy O'Neal Brown (slr)
01/13/2004	<u>147</u>	ORDER as to Jimmy O'Neal Brown denying as moot [121-1] Motion to Compel Judgment on Motion for Re-Test; denying as moot [125-1] Motion for the Court to Take Judicial Notice; denying [126-1] Motion to Supplement Pending [112-1] Motion under U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by Person in Federal Custody. (Civil Action No: 5:01-0410) cc: defendant; USA; Judge (Signed by Magistrate Judge VanDervort) (slr)
03/08/2004	<u>148</u>	MOTION by Jimmy O'Neal Brown to Vacate [79-1] Judgment Order and to Correct Sentence (slr)

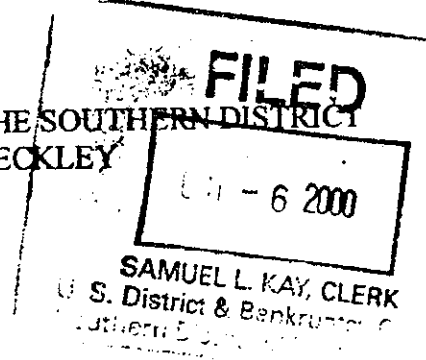
03/08/2004		NOTE TO FILE: Forwarded copy of docket sheet to Jimmy O'Neal Brown, pursuant to letter request. (slr)
03/18/2004	<u>149</u>	MOTION by Jimmy O'Neal Brown to Decline Magistrate (slr)
05/13/2004	<u>151</u>	PROPOSED FINDINGS AND RECOMMENDATIONS recommending that the District Court deny/dismiss Movant's [112] Motion Under 2255 to Vacate, Set Aside or Correct his Sentence, and Movant's 148 Motion to Vacate, Set Aside or Correct his Sentence and remove this matter from the Court's docket. Objections to PF&R due by 5/28/2004. Signed by Judge R. Clarke VanDervort on 5/12/2004. (cc: Judge, USA, deft) (slr)
05/24/2004	<u>152</u>	MOTION by Jimmy O'Neal Brown for Leave to File Amended Complaint (slr)
05/24/2004	<u>153</u>	(AMENDED) MOTION by Jimmy O'Neal Brown to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody pursuant to Title 28, United States Code, Section 2255. Cross Reference Civil Case Number 5:01-410. (slr)
05/24/2004	<u>154</u>	MEMORANDUM & AUTHORITIES IN SUPPORT of Amended 153 Motion to Vacate, Set Aside or Correct Sentence (2255), filed by Jimmy O. Brown
05/26/2004	<u>155</u>	OBJECTIONS TO MAGISTRATE'S PROPOSED FINDINGS AND RECOMENDATIONS [117] by Jimmy O'Neal Brown (cds)
05/28/2004	<u>156</u>	COPY OF 4CCA JUDGMENT in 4CCA Case No. 03-7754. A certified copy of this judgment will be provided to the district court upon issuance of the mandate. This judgment will not take effect until issuance of the mandate. (cds)
06/01/2004	<u>157</u>	ORDER finding that (1) the Movant's guilty plea to the offense for which he is currently serving a 188-month term of incarceration constituted an admission of the offense's essential elements, including the identity and quantity of the controlled substances; (2) that the irregularities at the WV State Police Laboratory do not constitute a fair and just reason for withdrawal of his plea; (3) that none of the movant's allegations suggest that his guilty plea was not knowing and voluntary; (4) that any irregularity in the grand jury proceedings did not prejudice him; (5) that movant's counsel was not ineffective for failing to challenge lab reports, which were presented to the grand jury when it indicted him; (6) that the movant's ineffective assistance of counsel based on Apprendi v. New Jersey is without merit; (7) that the movant's files and records of the case conclusively show that he is not entitled to relief and (8) that the movant's files and records of the case conclusively show that an evidentiary hearing is not required; denying and dismissing movant's [112] 2255 Motion. Signed by Chief Judge David A. Faber on 6/1/2004. (cc: Judge, USA, USP, USM, counsel, deft) (slr)
06/14/2004	<u>158</u>	MOTION by Jimmy O'Neal Brown for Retesting Drug-Related Evidence (rle)

06/21/2004	● <u>159</u>	LETTER from 4CCA, dated 06/17/04, re: a petition for Rehearing has been filed and a timely petition for rehearing en banc has been filed in 4CCA Case No. 03-7754 as to Jimmy O'Neal Brown. (tmr)
06/22/2004	● <u>160</u>	PETITION for Panel Reconsideration and/or Suggestion for Rehearing En-Banc as to Jimmy O'Neal Brown (Appeal No. 03-7754) (**Copy mailed to USCA, 4th Circuit)
06/28/2004	● <u>161</u>	LETTER to Clerk of Court, from Jimmy O. Brown dated 6/9/2004, re: Requesting Copy of Local Rules (**Forwarded copy of Local Rules to Jimmy O. Brown**)
08/05/2004	● <u>162</u>	NOTICE OF APPEAL (Interlocutory) by Jimmy O'Neal Brown re <u>157</u> Order entered 6/1/04. (slr)
08/05/2004	● <u>163</u>	MOTION by Jimmy O'Neal Brown and Affidavit for Leave to Proceed in Forma Pauperis Pursuant to Title 28 U.S.C. Section 1915 (slr)
08/05/2004	● <u>164</u>	MOTION by Jimmy O'Neal Brown Requesting Certificate of Appealability Pursuant to Title 28 U.S.C. Section 2253 (slr)
08/05/2004	● <u>165</u>	NOTICE OF APPELLATE ACTION - TRANSMITTING NOTICE OF APPEAL AND DOCKET SHEET TO 4CCA as to Jimmy O'Neal Brown re: <u>162</u> Notice of Appeal - Interlocutory. (slr)
08/09/2004	● <u>166</u>	ORDER OF 4CCA as to [82] Notice of Appeal ON PETITION FOR REHEARING AND REHEARING EN BANC in 4CCA Case No. 03-7754: denying the Petition for rehearing and rehearing en banc. (slr)
08/20/2004	● <u>167</u>	NOTICE OF APPELLATE ACTION RECEIVED as to Jimmy O'Neal Brown re: <u>162</u> Notice of Appeal - Interlocutory. 4CCA Case Number: 04-7297. 4CCA Case Manager: S. J. Beasley. (slr)
08/20/2004	● <u>168</u>	LETTER from 4CCA dated 8/17/2004, requesting transmittal of ROA in 4CCA Case Number 04-7297. (**Letter states that, if the District Court requires the record for the purposes of ruling on pending motion, record should be forwarded to USCA immediately after resolution of motion(s) **) (slr)
09/28/2004	● <u>169</u>	ORDER: finding that Movant's claims that the Government breached its promise and his attorney was ineffective for failing to pursue the matter are without merit; denying Movant Jimmy O'Neal Brown's <u>152</u> Motion for Leave to File Amended Complaint. Signed by Judge R. Clarke VanDervort on 9/27/2004. (cc: Judge, USA, USP, USM, counsel, deft) (rle)
10/18/2004	● <u>170</u>	MOTION by Jimmy O'Neal Brown to Compel Performance (cds)
11/05/2004	● <u>171</u>	LETTER to USDC, from USCA dated 11/2/2004, re: Seeking information re: Appellant's application for leave to proceed on appeal in forma pauperis
01/13/2005	● <u>172</u>	LETTER to Clerk of Court, from Shirley Beasley, Case Manager dated 1/10/2005, Requesting to be advised when action will be taken on

		appellant's motion for leave to proceed on appeal IFP
01/24/2005	● <u>173</u>	ORDER: Jimmy O'Neal Brown will not be permitted to proceed on appeal in forma pauperis . Signed by Judge David A. Faber on 1/24/2005. (cc: Judge, USA, USP, USM, counsel, deft) (cds)
01/24/2005	● <u>174</u>	ORDER denying <u>163</u> Motion for Leave to Proceed on Appeal in Forma Pauperis as to Jimmy O'Neal Brown (1). Signed by Judge David A. Faber on 1/24/2005. (cc: Judge, USA, USP, USM, counsel, deft) (cds)
01/24/2005	● <u>175</u>	UPDATE TO NOTICE OF APPELLATE ACTION as to Jimmy O'Neal Brown re: ORDER DENYING IFP STATUS in 4CCA Case No. 04-7297. (cds)
01/31/2005	● <u>176</u>	NOTICE OF APPELLATE ACTION BY 4CCA ACKNOWLEDGING RECEIPT OF UPDATE ITEM on 1/28/05, re: Order denying IFP status in 4CCA Case No. 04-7297 as to Jimmy O'Neal Brown. (rle)
01/31/2005	● <u>177</u>	LETTER to Jimmy O'Neal Brown, from 4CCA dated 1/26/2005, re: payment of filing fee and/or application to proceed IFP Modified on 2/10/2005 (Staples, Cassandra).
02/09/2005	● <u>178</u>	MOTION by Jimmy O'Neal Brown for Reconsideration and/or to Alter or Amend Judgment Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure (cds) (Entered: 02/10/2005)
02/14/2005	● <u>179</u>	LETTER from 4CCA dated 2/8/2005, requesting transmittal of ROA in 4CCA Case Number 04-7297. (rle)
02/15/2005	● <u>180</u>	NOTICE OF APPELLATE ACTION - CERTIFIED AND TRANSMITTED RECORD ON APPEAL as to Jimmy O'Neal Brown TO 4CCA re: <u>162</u> Notice of Appeal - Interlocutory. (11 volumes). (rle)
02/22/2005	● <u>181</u>	NOTICE OF APPELLATE ACTION BY 4CCA ACKNOWLEDGING RECEIPT OF RECORD ON APPEAL on 2/17/05 in 4CCA Case No. 04-7297 as to Jimmy O'Neal Brown. (rle)
02/25/2005	● <u>182</u>	LETTER to Jimmy O'Neal Brown, from 4CCA dated 2/22/2005, re: docket fee for filing petition for a writ of mandamus, payment to be made to Clerk, US Court of Appeals
02/25/2005	● <u>183</u>	LETTER to Jimmy O'Neal Brown, from 4CCA dated 2/22/2005, re: non-compliance with Rule 21 of FRAP (proof of service of writ of mandamus on trial court judge)
02/28/2005	● <u>184</u>	Copy of Defendant Jimmy O'Neal Brown's Motion for Writ of Mandamus pursuant to 28 USC 1651, filed with the Fourth Circuit Court of Appeals.
06/30/2005	● <u>186</u>	COURTESY COPY OF OPINION OF 4CCA re: <u>162</u> Notice of Appeal in 4CCA Case No. 04-7297. (rle)
06/30/2005	● <u>187</u>	COPY OF 4CCA JUDGMENT in 4CCA Case No. 04-7297: granting a certificate of appealability, vacating and remanding the judgment of the District Court. A certified copy of this judgment will be provided to the

		district court upon issuance of the mandate. This judgment will not take effect until issuance of the mandate. (rle)
08/23/2005	● <u>188</u>	JUDGMENT/MANDATE OF 4CCA (CERTIFIED COPY) as to Jimmy O'Neal Brown re <u>162</u> Notice of Appeal - Interlocutory. (Attachments: # 1) (cds)
08/23/2005	● <u>189</u>	LETTER FROM 4CCA RETURNING APPEAL RECORD in 11 Volumes as to Jimmy O'Neal Brown re: <u>162</u> Notice of Appeal. (cds)
09/02/2005	● <u>190</u>	MOTION by Jimmy O'Neal Brown to Amend <u>119</u> Supporting Brief and Objections to Proposed Findings and Recommendations, and REQUEST to have Government forward results of its retest of drug evidence to Defendant. (rle)
09/29/2005	● <u>202</u>	MEMORANDUM OPINION AND ORDER: Petitioner's objections to the PF&R are overruled; 2255 Motion is dismissed; Petitioner's motion to vacate judgment order and correct sentence dismissed; Petitioner's motion to amend supporting brief and objections denied. Clerk is directed to strike this case from the active docket of the court. Signed by Judge David A. Faber on 9/29/2005. (cc: Judge, USA, USP, USM, counsel, deft) (rle)
11/21/2005	● <u>206</u>	NOTICE OF APPEAL by Jimmy O'Neal Brown (cds)
11/21/2005	● <u>207</u>	MOTION and AFFIDAVIT by Jimmy O'Neal Brown for Leave to Appeal In Forma Pauperis Pursuant to Title 28 USC 1915. (cds)
11/21/2005	● <u>208</u>	MOTION by Jimmy O'Neal Brown Requesting Certificate of Appealability Pursuant to Title 28 USC 2253. (cds)
11/21/2005	● <u>209</u>	NOTICE OF APPELLATE ACTION - TRANSMITTING NOTICE OF APPEAL AND DOCKET SHEET TO 4CCA as to Jimmy O'Neal Brown re: <u>206</u> Notice of Appeal (cds)
11/29/2005	● <u>210</u>	ORDER: Directing that Jimmy O'Neal Brown, may proceed on appeal in forma pauperis . Signed by Judge David A. Faber on 11/29/2005. (cc: Judge, USA, USP, USM, counsel, deft) (cds)
11/30/2005	● <u>211</u>	UPDATE TO NOTICE OF APPELLATE ACTION as to Jimmy O'Neal Brown re: TRANSMITTING ORDER GRANTING IFP STATUS. (cds)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF WEST VIRGINIA AT BECKLEY



UNITED STATES OF AMERICA,

PLAINTIFF.

VS.

DISTRICT COURT NO. 5:98-00189-01

JIMMY O'NEAL BROWN,

DEFENDANT.

MOTION FOR RETESTING OF DRUG-RELATED EVIDENCE

COMES NOW the Defendant, Jimmy O'Neal Brown, by and through his counsel, E. Lavoyd Morgan, Jr., and moves this Honorable Court to Order that all drug-related evidence previously offered against him be retested by an independent laboratory. In support of his Motion, defendant states the following:

1. Defendant was previously before this Court pursuant to his being charged with Aiding and Abetting the Knowing and Intentional Possession with Intent to Distribute Methamphetamine and Cocaine. On October 25, 1999, Defendant, entered a plea of guilty and was subsequently sentenced on January 10, 2000 to a term of 188 months;
2. The drug evidence offered against Defendant had been tested by West Virginia State Police Forensic Laboratory;
3. By letter dated August 15, 2000, defendant was advised that the United States has received evidence of certain irregularities and the

E. LAVOYD MORGAN, JR.
ATTORNEY AT LAW
PO BOX 1847
LEWISBURG, WV 26041

Exhibit

B

Docket # 106

106

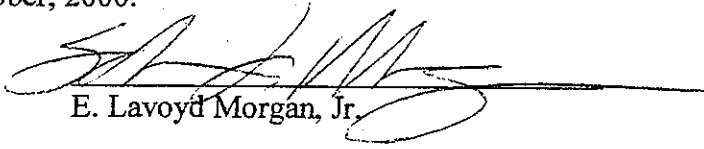
CERTIFICATE OF SERVICE

I, E. Lavoyd Morgan, Jr., does hereby certify that service of the
attached Motion for Retesting of Drug-Related Evidence was made upon
the State of West Virginia by mailing a true and correct copy in the U.S.

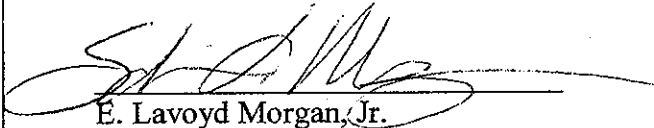
Mail, postage prepaid and properly addressed to:

Miller A. Bushong, III
Assistant United States Attorney
P.O. Box 1713
Charleston, West Virginia 25301

This 5th day of October, 2000.


E. Lavoyd Morgan, Jr.

Prepared by:



E. Lavoyd Morgan, Jr.
Counsel for Defendant
(304)645-7120
West Virginia State Bar No. 6938

Approved by:

Miller A. Bushong, III
Assistant United States Attorney
P.O. Box 1713
Charleston, West Virginia 25301

Case 5:98-cr-00189 Document 170 Filed 10/18/2004 Page 4 of 5
U. S. Department of Justice

United States Attorney
Southern District of West Virginia

September 15, 2000

E. Lavoyd Morgan, Jr., Esquire
Post Office Box 388
Lewisburg, West Virginia 24901

United States Courthouse

300 Virginia Street, E.

Room 4000

Charleston, West Virginia 25301

FAX: (304) 347-5104

Mailing Address:

Post Office Box 1713

Charleston, West Virginia 25326-1713

(304) 345-2200

1-800-659-8726

Re: United States v. Jimmy O'Neal Brown
Appeal No. 00-4070

Dear Mr. Morgan:

This is to advise you that the United States has received evidence of certain irregularities in the process in which drug-related evidence has been tested and analyzed by the Drug Section of the West Virginia State Police Forensic Laboratory. An investigation of these irregularities is ongoing.

In light of this evidence, and to assure there is no miscarriage of justice, the United States is undertaking efforts to have any drug-related evidence offered or to be offered against a defendant to be retested by a laboratory independent of the West Virginia State Police Lab.

The defendant may of course stipulate to the drugs in the case and forego the need for such retesting. Absent such a stipulation, however, the United States will proceed with retesting.

The United States wanted you to be apprised of this development as soon as possible so that you can appropriately represent your client.

If you wish to discuss the specifics of your case, please contact the Assistant United States Attorney handling your case.

Very truly yours,


REBECCA A. BETTS
United States Attorney

RAB:JLF/ljw

Exhibit

C



U. S. Department of Justice

United States Attorney
Southern District of West Virginia

October 31, 2000

United States Courthouse

300 Virginia Street, E.

Room 4000

Charleston, West Virginia 25301

FAX: (304) 347-5104

Mailing Address:

Post Office Box 1713

Charleston, West Virginia 25326-1713

(304) 345-2200

1-800-659-8726

E. Lavoyd Morgan, Jr., Esquire
Post Office Box 1847
Lewisburg, West Virginia 24901

Re: United States v. Jimmy O'Neal Brown
Criminal No. 5:98-00189-01

Dear Mr. Morgan:

I am in receipt of your letter to Miller Bushong in our office. We intend to have the drugs retested by the DEA. If that does not suffice, I will not object to your having them retested privately under appropriate security conditions.

Please call me at your convenience to discuss this. Thank you for your cooperation.

Very truly yours,

REBECCA A. BETTS
United States Attorney

By:

John L. File
JOHN L. FILE
Assistant United States Attorney

JLF/ljw

EXHIBIT



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

March 11, 2004

Mr. Jimmy O. Brown
**05742-088/BB
Post Office Box 699
Estill, SC 29918-0699

Dear Mr. Brown:

A copy of your letter asking for information maintained by the FBI under the Freedom of Information Act (FOIA) concerning other individuals is being returned to you.

Before we commence processing your request for records pertaining to other individuals, we ask that you submit to the FBI either proof of death or a privacy waiver from these people. Proof of death can be a copy of a death certificate, obituary or a recognized reference source. Death is presumed if the birth date of the subject is more than 100 years ago. Without proof of death or a privacy waiver, the disclosure of law enforcement records or information about another person is considered an unwarranted invasion of personal privacy. Such records, if they exist, are exempt from disclosure pursuant to Exemptions (b)(6) and/or (b)(7)(C) of the FOIA, Title 5, United States Code, Section 552.

Enclosed is a Privacy Waiver and Certification of Identity form. (You may make extra copies) The subjects of your request should complete the form and then sign it, preferably in the presence of a notary. Please note that mail addressed to the FBI is delayed several weeks due to increased security procedures now in place. You may fax your response directly to the RID Section at 202-324-3752.

In order to ensure an accurate search of our records, please provide your subjects complete name, date of birth and place of birth.

Once you have provided us with the necessary information, as described above, we will conduct a search of our records and advise you of the results.

This response should not be considered an indication of whether or not records responsive to your request exist in FBI files.

Exhibit
D

Sincerely yours,

David M. Hardy/W

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosures (2)

JIMMY O. BROWN
05742-088/BB
P.O. BOX 699
ESTILL, SC 29918-0699

March 1, 2004

Federal Bureau of Investigations
Freedom Of Information/Privacy Act Dept.
J. Edgar Hoover Bldg.
935 Pennsylvania Ave.
NW, Washington, DC 20534

Re: Freedom of Information/Privacy Act

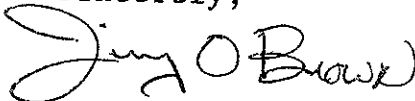
Dear FOI/PA Coordinator:

I am requesting, pursuant to 28 CFR § 16 et., seq. and the Freedom of Information/Privacy Act, 5 U.S.C. § 552a, the production of the following records.

1. In 2000, lab officials of the West Virginia State Police Laboratory were investigated by the Federal Bureau of Investigation for skipping tests and ignoring procedures that resulted in inaccurate lab findings. A FBI report was issued with regards to this investigation. I am seeking a copy of this report and its accompanying individual investigations.
2. Based on the above, please provide any records concerning retesting, the identity and the nature of the discrepancies related to individual tests.

Pursuant to § 16.5, I am requesting that you r officer respond to this FOI/PA request within the allocated ten day period. And, as such, your prompt cooperation in this matter will be most appreciated.

Sincerely,



Jimmy O. Brown

JB/js

cc: personal files

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

JIMMY O. BROWN,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

CRIMINAL NUMBER: 5:98-00189-01

MOTION TO COMPELL PERFORMANCE

COMES NOW the movant, Jimmy O. Brown, in propria persona, in the above entitled cause, and hereby moves this Honorable Court to issue an Order compelling the United States to performance. As good grounds in support of his motion, movant would show:

1. In a letter dated September 15, 2000, by United States Attorney Rebecca A. Betts, movant was advised that "to assure there is no miscarriage of justice, the United States is undertaking efforts to have any drug-related evidence offered or to be offered against a defendant to be retested by a laboratory independent of the West Virginia State Police Lab." (See Exhibit "A")

2. This letter occurred as a result of the United States receiving "evidence of certain irregularities in the process in which drug-related evidence ha[d] been tested and analyzed by the Drug Section of the West Virginia State Police Forensic Laboratory".

3. The United States qualified that movant "may of course stipulate to the drugs in the case and forego the need for such retesting. Absent such a stipulation, however, [the United States asserted] that [it would] proceed with retesting."

4. Movant did not stipulate to the drugs. In fact, movant's attorney contacted Assistant U.S. Attorney Miller Bushong, to have

Exhibit
E

the retest conducted, and filed a motion for that purpose.

5. In a letter dated October 31, 2000, movant's attorney was advised by Assistant U.S. Attorney John L. File, of the United States' intent "to have the drugs retested by the DEA". (See Exhibit "B")

6. The United States went on to state that if the retesting by the DEA "d[id] not suffice, [the United States would] not object to [] having them retested privately under appropriate security conditions".

7. Once again, movant did not contest the retesting.

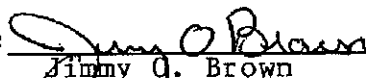
8. It is movant's pistion that on two (2) separate occassions the United States has stated that, to insure there is no miscarriage of justice, it was going to have the drugs used in movant's case retested, and they have not done so.

9. Movant asserts that it is in the interests of justice and appearance of fairness to have the drug-related evidence of this case retested, and that since the United States has failed to perform the retest as stated, this Court should compel them to perform in the manner they have said they would, and provide movant with a copy of the retest results.

WHEREFORE, for good grounds shown, movant respectfully requests that this Honorable Court issue an Order directing the United States to conduct a retest on the drug-related evidence offered and used against the movant and to provide movant with a copy of the results.

Respectfully submitted this 14th day of October, 2004.

By:


Jimmy Q. Brown

C E R T I F I C A T E O F S E R V I C E

This is to certify that the undersigned has this date served the foregoing **MOTION TO COMPELL PERFORMANCE** in the above-captioned action upon all other parties to this cause by depositing a copy hereof in a postpaid wrapped in FCI Estill's official legal depository addressed as follows:

ADDRESSEE(S):

OFFICE OF THE U.S. ATTORNEY
P.O. BOX 1713
CHARLESTON, WV 25326-1713

This 14th day of October, 2004.


Jimmy P. Brown

during, or after my trial, inform myself or my attorney of this or prior investigations, despite several requests for evidence. (Emphasis Added)

- 5) On May 16, 1999, Plaintiff enacted plea in the above case, but subsequently withdrew my plea to pursue other representation.
- 6) Without knowledge of Crime Lab faults, my attorney E.L. Morgan Esq., and myself went forward with my case by requesting discovery. (see Exhibit "B", Docket)
- 7) Between October 15, 1999, and October 22, 1999, Plaintiff received three responses to discovery and still no notification of this or any other Crime Lab investigation was provided to Plaintiff or his counsel.
- 8) On October 28, 1999, still without being informed about the Crime Lab, under the advice of my attorney, (E.L. Morgan) the Plaintiff Pled Guilty and stipulated to the crime lab report by Trooper White that the substance was Meth Amphetamine.
- 9) On January 12, 2000, still without knowledge of the Crime Lab Investigation, the plaintiff was sentenced to 188 months by Judge David Faber, whom himself never informed the Court as to the Investigation of the Crime Lab.
- 10) The Plaintiff is not a chemist, does not use Meth Amphetamines, and was never allowed to test the substance in this case and solely pled guilty because of the Crime Lab's report.
- 11) On September 15, 2000, sixteen months after W. Va. Supreme Court ordered an investigation of the Crime Lab, the Plaintiff was informed by a letter from U.S. Attorney Rebecca Betts as to the problems at the Crime Lab. Wherein, "The United States is undertaking efforts to have any drug related evidence... retested by a laboratory independent of the W. Va. State Police Lab." (see Exhibit "C")
- 12) On October 6, 2000, Plaintiff filed, through counsel (E.L. Morgan) to retest the substances related to the instant offense. (see Exhibit "B")
- 13) On October 31, 2000, Plaintiff received from U.S. Attorney John File a Letter of Intent to retest the substances related to the instant offense. (see Exhibit "C")

- 14) Over the next few years, numerous attempts by plaintiff to receive the results of the retest have moved no court to order the results to be provided. (See Exhibit "B") All avenues have been exhausted, save to bring forth this Bivens Civil Action to seek relief.
- 15) Further, the plaintiff requested by FOIA for the results of Lab Investigation. (Exhibit "D")

Claim

- 1) The West Virginia Crime Lab, during years of mishandling evidence and having other irregularities in procedure, did make it impossible to receive a fair trial as guaranteed by the 4th Amendment.
- 2) Sergeant Timothy White, did willfully, as an employee of the Lab, along with civilian co-workers, skip procedure, falsified documents and created other irregularities within the Crime Lab. This made it impossible to receive a fair trial and denied Plaintiff Liberty which is in violation of the 4th and 8th Amendments.
- 3) *U.S. Attorneys Rebecca Betts and John File, through criminal neglect bordering on malfeasance did violate both the 4th and 8th Amendments by willfully withholding discovery of the problems of the Crime Lab from both the Plaintiff and the Courts, which created a miscarriage of justice, in not informing the Plaintiff of this or other previous investigations of this specific Crime Lab and refusing to supply the results of the retest. This has caused undue suffering and loss of liberty along with denying due process of the law. (Emphasis Added)*

Relief

- 1) That this Honorable Court order the results of the retest be given to the Plaintiff.
- 2) That if no retest was done, that this Honorable Court set aside conviction until a proper retest can be completed and verified, and order a retest of the substances related to the instant offence.

- 3) That an investigation be ordered into the U.S. Attorneys Office of the Southern District of West Virginia's about Legal System (i.e. Discovery Motions) be forth coming.
- 4) That both Rebecca Betts and John File of the same U.S. Attorney's Office be held accountable in their professional capacities for violation of Civil Rights Violations against this Plaintiff.
- 5) That the Plaintiff be awarded monetary damages no less than (2) Two Million Dollars (U.S.) for Actual damages and (1) One Million Dollars U.S. in Punitive damages.
- 6) That this Court Grant the Plaintiff Immediate Release from Custody for the Duration of all Legal Proceedings.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 31 day of Oct, 2007.

Jimmy O'Neal Brown
Jimmy O'Neal Brown #05742-088, Plaintiff, PRO SE
Federal Correctional Institute
P.O. Box 340 (1BL-125)
Salters, S.C. 29590



FORENSIC LABORATORY

725 Jefferson Road, Sou



TFC O. L. AYERS
B.C.I. WV STATE POLICE
P. O. BOX 7285
SPRAGUE, WV 25926

Ju.

Post-it Fax Note 7671		Date 7/31/98	# of Pages
To John F. Ie	From O. L. Ayers		
Co./Dept. U.S. ATTY	Co.		
Phone #	Phone # 256-6725		
Fax #	Fax # 256-6714		

This examination has been made with the understanding that the evidence is connected with an official investigation of a criminal matter and that the Laboratory report will be used for official purposes only, related to the investigation or a subsequent criminal prosecution. Authorization cannot be granted for the use of the Laboratory report in connection with a civil proceeding.

REFERENCE: Jimmy Brown - Suspect
Susan Boyd - Suspect

Drugs - 07/12/98

EVIDENCE RECEIVED: 07/21/98 via personal delivery
by TFC. O. L. Ayers

EVIDENCE DISPOSITION: Enclosed

EXAMINATION REQUESTED: Drug Analysis

SPECIMENS:

- Item #1: One plastic bag containing burnt hand rolled cigarettes
- Item #2: One plastic bag containing white chunk material
- Item #3: Three plastic bags containing tan powder

RESULTS OF EXAMINATION:

Item #1, weighing approximately 0.76 gram, contains marihuana, a Schedule I controlled substance.

Item #2, weighing approximately 11.7 grams, contains cocaine, a Schedule II controlled substance.

Item #3, weighing a total of approximately 50.9 grams, contains 22.6g methamphetamine, a Schedule II controlled substance.

Sincerely,

T. G. White, Trooper
Forensic Chemist

Exhibit

A

APPEAL, CLOSED, Jackson, LC-2

**United States District Court
Southern District of West Virginia (Beckley)
CRIMINAL DOCKET FOR CASE #: 5:98-cr-00189-1**

Case title: USA v. Brown, et al
Magistrate judge case number: 6:98-mj-00094

Date Filed: 11/10/1998

Assigned to: Chief Judge David A.
Faber

Defendant

Jimmy O'Neal Brown (1)
TERMINATED: 01/13/2000

represented by **E. Lavoyd Morgan, Jr.**
BARRY L. BRUCE & ASSOCIATES
P. O. Box 388
Lewisburg, WV 24901
304/645-4182
Fax: 645-4183
TERMINATED: 01/13/2000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Edward H. Weis
FEDERAL PUBLIC DEFENDER'S
OFFICE
Room 3400
300 Virginia Street East
Charleston, WV 25301
304/347-3350
Fax: 347-3356
TERMINATED: 01/13/2000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Public Defender or
Community Defender Appointment

Jimmy O'Neal Brown
FCI ESTILL
100 Prison Road
P. O. Box 699
Estill, SC 29918
TERMINATED: 01/13/2000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Exhibit
B

Tracy Lusk
200 1/2 S. Walker St.
Princeton, WV 24740
304/431-3333
TERMINATED: 08/06/1999
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

21:841(a)(1) CONTROLLED
SUBSTANCE - SELL, DISTRIBUTE,
OR DISPENSE a quantity of
methamphetamine and cocaine,
Schedule II controlled substances and
18:2 AIDING AND ABETTING
(1)

Disposition

The deft. is committed to the custody of
the US BOP for a 188 month term of
imprisonment; following his term of
incarceration, deft. shall remain on
supervised release for 5 yrs.; deft. is
assessed .00 and fined ,000.00

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Plaintiff

United States of America
TERMINATED: 01/13/2000

represented by **Michael H. Spencer**
U. S. ATTORNEY'S OFFICE
P. O. Box 1713
Charleston, WV 25326-1713
304/345-2200
Fax: 347-5104
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Miller A. Bushong, III
U. S. ATTORNEY'S OFFICE
P. O. Box 1713
Charleston, WV 25326-1713

304/345-2200
 Fax: 347-5104
 TERMINATED: 01/13/2000
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/09/1998		PROBATION OFFICER ASSIGNED as to Jimmy O'Neal Brown PRETRIAL SERVICES: Peggy Adams; PRESENTENCE INVESTIGATION: UNASSIGNED. (slr) Modified on 12/02/1998 (Entered: 11/12/1998)
11/10/1998		ARREST WARRANT issued as to Jimmy O'Neal Brown (Warrant issued 10/21/98) (cds) Modified on 11/18/1998 (Entered: 11/18/1998)
01/10/1999		SPECIAL ASSESSMENT PAYMENT RECEIVED as to Jimmy O'Neal Brown : \$100.00 RECEIVED, RECEIPT NUMBER 074947. cc: U.S. Attorney; U. Probation. (rle) (Entered: 01/11/2000)
01/28/1999	18	PETITION/ORDER directing the Clerk to issue a WHCAP as to Jimmy O'Neal Brown returnable 2/23/99 at 2:30 p.m.. (Signed by Magistrate Judge Jerry D. Hogg) cc: defendant and counsel; USA; USM; USP; Judge (slr) (Entered: 01/29/1999)
01/28/1999		WRIT of Habeas Corpus ad Prosequendum issued and delivered to USM as to Jimmy O'Neal Brown for 2/23/99. (slr) (Entered: 01/29/1999)
01/29/1999	19	WRIT of Habeas Corpus ad Prosequendum returned unexecuted on 1/29/99 as to Jimmy O'Neal Brown; subject taken into federal custody on 1/27/99 in D/SC. (slr)
01/29/1999		ARREST of Jimmy O'Neal Brown in of South Carolina (cds) (Entered: 02/08/1999)
02/08/1999	22	ARREST WARRANT RETURNED EXECUTED as to Jimmy O'Neal Brown on 1/29/99 (cds)
02/08/1999	23	RULE 40 DOCUMENTS as to Jimmy O'Neal Brown received from District of South Carolina; Magistrate Case number: 4:99-156 consisting of (1) Rule 40 Worksheet (2) Waiver of Rule 40 Hearing (3) Commitment to Another District (4) Financial Affidavit (5) Docket Sheet from District of South Carolina (cds)
02/22/1999	24	ORDER as to Jimmy O'Neal Brown cancelling arraignment presently scheduled for 2/23/99 at 2:30 p.m. in Beckley; arraignment will be continued generally until notification from USMS that defendant has arrived in SDWV cc: defendant's counsel; USA; USM; USP by regular mail & FAX; Judge (Signed by Magistrate Judge Mary S. Feinberg) (mjp) Modified on 02/22/1999
02/25/1999	25	ORDER as to Jimmy O'Neal Brown rescheduling Arraignment for 3:00 p.m., 3/2/99, in BECKLEY, for Jimmy O'Neal Brown cc: defendant and

		counsel; USA; USM; USP; Judge (Signed by Magistrate Judge Mary S. Feinberg) (slr)
03/02/1999		ARRAIGNMENT as to Jimmy O'Neal Brown held (Magistrate Judge Mary S. Feinberg ; Court Reporter: Electronic) (slr)
03/02/1999	26	ARRAIGNMENT ORDER AND STANDARD DISCOVERY REQUESTS: Upon Hearing Held 3/2/99; deft. entered PNG to Indictment; trial set to a jury on 9:30 a.m., 5/4/99, in BECKLEY; pretrial hearing on motions set 1:30 p.m., 4/12/99, in BLUEFIELD before Judge David A. Faber; deft did not execute a waiver of right to be present at the hearings on motions prior to trial; deft was detained ; Standard Discovery Request Form executed; govt's responses to deft's standard discovery requests due 3/12/99; reciprocal discovery and filing of additional motions by deft due w/in 10 days of receipt of the requested materials and filing of the govt's written response to deft's discovery requests; jury questionnaires for the petit on the current panel shall be made available to each party for inspection and copying. (signed by Magistrate Judge Mary S. Feinberg) (cc: deft and counsel, USA, USM, USP; Judge; Jury Clerk) (slr)
03/02/1999	27	ORDER as to Jimmy O'Neal Brown, continuing the Detention Hearing until 10:30 a.m., 3/5/99, in BECKLEY, for Jimmy O'Neal Brown cc: defendant and counsel; USA; USM; USP; Judge (Signed by Magistrate Judge Mary S. Feinberg) (slr)
03/05/1999		DETENTION HEARING as to Jimmy O'Neal Brown held (Magistrate Judge Mary S. Feinberg ; Court Reporter: Electronic) (slr)
03/05/1999	28	WITNESS LIST as to Jimmy O'Neal Brown, RE: Detention Hrg. held 3/5/99 before Mag. Judge Mary Feinberg (slr)
03/05/1999	29	ORDER Upon detention hearing held 3/5/99 as to Jimmy O'Neal Brown; parties agreed that facts contained in the first 3 numbered sections of the Pretrial Services Report could be taken as proven for the purposes of the Detention hrg.; Court found that no condition or combination of conditions would ensure the deft.'s appearance or the safety of any other person and the community; Deft. is detained pending trial. cc: defendant and counsel; USA; USM; USP; Judge (Signed by Magistrate Judge Mary S. Feinberg) (slr)
03/05/1999	30	ORDER OF DETENTION PENDING TRIAL as to Jimmy O'Neal Brown ; remanding defendant to custody of U.S. Marshal. (Signed by Judge Mary S. Feinberg) cc: defendant and counsel; USA; USM; USP; Judge (slr)
03/17/1999	31	SEALED (mjp)
03/17/1999	32	SEALED (mjp)
03/17/1999	33	RESPONSE by USA to deft's Standard Discovery Requests and REQUEST by USA for Reciprocal Discovery. (slr)
03/18/1999	34	PROBATION OFFICER ASSIGNMENT/SUPERVISION FORM as to

		Jimmy O'Neal Brown ; PROBATION OFFICER: ADAMS; Type of Assignment: PRETRIAL SERVICES. (cds) (Entered: 03/25/1999)
04/09/1999	35	ORDER as to Jimmy O'Neal Brown cancelling pretrial motions hearing scheduled 4/12/99 at 1:30 p.m., in Bluefield cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp)
04/13/1999	36	ORDER as to Jimmy O'Neal Brown, set Plea Hearing Deadline for 11:00 5/3/99 for Jimmy O'Neal Brown , in BECKLEY cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp)
04/13/1999	37	MOTION by USA as to Jimmy O'Neal Brown to Schedule Guilty Plea Hearing (slr)
05/03/1999		COURTROOM MEMO as Jimmy O'Neal Brown (parties appeared for plea hearing and defendant informed court that he no longer intends to plead guilty) (mjp) (Entered: 05/04/1999)
05/04/1999	40	ORDER Upon hearing held 5/3/99 as to Jimmy O'Neal Brown, reset Jury Trial for 9:30 5/11/99 for Jimmy O'Neal Brown in BECKLEY, reset Pretrial Motions Hearing for 9:00 5/10/99 for Jimmy O'Neal Brown in BLUEFIELD, to Continue in Interests of Justice Time Excluded from 5/3/99 to 5/11/99 cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp)
05/04/1999	41	ORDER as to Jimmy O'Neal Brown directing Probation Office to deliver to counsel for both sides criminal history portion of Pretrial Services Report on defendant cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp)
05/05/1999	43	ORDER as to Jimmy O'Neal Brown granting [37-1] motion to Schedule Guilty Plea Hearing as to Jimmy O'Neal Brown, reset Plea Hearing Deadline for 1:00 5/6/99 for Jimmy O'Neal Brown , in BLUEFIELD cc: defendant's counsel; USA; USM; USP by mail & FAX; Judge (Signed by Judge David Faber) (mjp)
05/06/1999		PLEA HEARING as to Jimmy O'Neal Brown held (Judge David Faber; Court Reporter: Teresa Anderson) Jimmy O'Neal Brown count 1 (mjp)
05/06/1999	44	WRITTEN GUILTY PLEA Jimmy O'Neal Brown count 1 (mjp)
05/06/1999	45	LETTER-FORM PLEA AGREEMENT as to Jimmy O'Neal Brown (cc:USP) (mjp)
05/06/1999	46	LETTER as to Jimmy O'Neal Brown from USA addressed to Tracy B. Lusk, Esquire, dated 5/6/99, <u>re: sentencing issues.</u> (mjp)
05/07/1999	47	ORDER Upon hearing held 5/6/99 as to Jimmy O'Neal Brown, set Sentencing for 2:00 7/19/99 for Jimmy O'Neal Brown ; defendant is currently incarcerated and will remain so until sentencing cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp)
05/14/1999	48	PROBATION OFFICER ASSIGNMENT/SUPERVISION FORM as to Jimmy O'Neal Brown ; PROBATION OFFICER: Taylor; Type of

		Assignment: Presentence Investigation. (slr)
07/13/1999	49	ORDER reset Sentencing for 1:30 9/13/99 in BECKLEY for Jimmy O'Neal Brown (cc: defendant's counsel; USA; USM; USP; Judge and E. Lavoyd Morgan, Jr., Esq.) (Signed by Judge David Faber) (arb)
08/06/1999	50	ORDER SUBSTITUTING COUNSEL: defendant advised Court that he has retained E. Lavoyd Morgan, Jr., Barry L. Bruce and Associates to represent him and it is ORDERED that E. Lavoyd Morgan, Jr. be substituted as Counsel of record for said defendant (Signed by Judge David Faber) cc: defendant and counsel; USA; USM; USP; Judge (mjp)
09/10/1999	51	MOTION by Jimmy O'Neal Brown to Continue Sentencing (arb)
09/10/1999	52	ORDER granting [51-1] Defendant's Motion to Continue Sentencing reset Sentencing for 1:00 9/27/99 in BECKLEY for Jimmy O'Neal Brown (cc by mail & fax: Defendant's counsel; USA; USM; USP; Judge) (Signed by Judge David Faber) (arb)
09/15/1999	53	TRANSCRIPT as to Jimmy O'Neal Brown for Plea Hearing held 5/6/99, before Judge David Faber. Court Reporter: Teresa Anderson. (slr)
09/27/1999	54	MOTION by Jimmy O'Neal Brown to Withdraw Plea of Guilty (mjp)
09/27/1999		MOTION HEARING as to Jimmy O'Neal Brown re: [54-1] motion to Withdraw Plea of Guilty held (Judge David Faber ; Court Reporter: Teresa Anderson) (cds)
09/27/1999	55	WITNESS LIST by Jimmy O'Neal Brown, USA (cds)
09/27/1999	56	Exhibit list by Jimmy O'Neal Brown, USA w/govt's exhibits 1 & 2 attached (cds)
09/27/1999	57	ORDER as to Jimmy O'Neal Brown granting [54-1] motion to Withdraw Plea; scheduled Jury Trial for 9:30 10/26/99 in Beckley. cc: defendant and counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (cds) (Entered: 09/28/1999)
09/28/1999	58	RESPONSE by USA as to Jimmy O'Neal Brown's [54-1] Motion to Withdraw Plea of Guilty (slr)
10/15/1999	60	FIRST SUPPLEMENTAL RESPONSE by USA to Standard Discovery Requests from defendant Jimmy O'Neal Brown . (slr)
10/18/1999	61	TRANSCRIPT as to Jimmy O'Neal Brown for Motion to Withdraw Plea held 9/27/99, before Judge David Faber. Court Reporter: Teresa Anderson (slr)
10/20/1999	62	SECOND SUPPLEMENTAL RESPONSE by USA to Standard Discovery Requests from defendant Jimmy O'Neal Brown . (slr)
10/20/1999	63	REQUEST by Jimmy O'Neal Brown for issuance of subpoena for Trooper Holster returnable 10/22/99 9:30 a.m. BK. (cds) (Entered: 10/21/1999)

10/21/1999	64	MOTION by Jimmy O'Neal Brown to Suppress Evidence with request that an evidentiary hearing be scheduled. (cds) Modified on 10/21/1999
10/21/1999	65	ORDER as to Jimmy O'Neal Brown, set Pretrial Motions Hearing for 9:30 10/22/99 for Jimmy O'Neal Brown , in BECKLEY cc: defendant's counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (mjp) (Entered: 10/22/1999)
10/22/1999	66	THIRD SUPPLEMENTAL RESPONSE by USA to Standard Discovery Requests from defendant Jimmy O'Neal Brown . (slr)
10/22/1999		MOTION HEARING as to Jimmy O'Neal Brown re: [64-1] motion to Suppress Evidence held (Judge David Faber ; Court Reporter: Teresa Anderson) (cds)
10/22/1999	67	WITNESS LIST by USA as to Jimmy O'Neal Brown (cds)
10/22/1999	68	Exhibit list by USA as to Jimmy O'Neal Brown w/exhibits attached (cds)
10/25/1999	70	RESPONSE by USA as to Defendant Jimmy O'Neal Brown's [64-1] motion to Suppress Evidence (rle)
10/25/1999	71	ORDER: Upon hearing held 10/22/99 as to Jimmy O'Neal Brown denying [64-1] motion to Suppress Evidence. cc: defendant and counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (rle)
10/25/1999		PLEA HEARING as to Jimmy O'Neal Brown held (Judge David Faber ; Court Reporter: Teresa Anderson) Jimmy O'Neal Brown (Deft 1) as to Count 1 (rle)
10/25/1999	72	LETTER as to Jimmy O'Neal Brown from USA addressed to E. Lavoyd Morgan, dated 10/22/99, re: Confirmation of discussion held with counsel and defendant regarding defendant's proposed plea. (rle)
10/25/1999	73	WRITTEN GUILTY PLEA Jimmy O'Neal Brown (Deft 1) as to Count 1 (rle)
10/25/1999	74	LETTER-FORM PLEA AGREEMENT as to Jimmy O'Neal Brown (cc:USP) (rle)
10/25/1999	75	TRANSCRIPT as to Jimmy O'Neal Brown for Preliminary/Detention Hearing held 7/16/98, before Magistrate Judge Mary S. Feinberg . Court Reporter: Barbara Steinke (slr) (Entered: 10/26/1999)
10/28/1999	76	ORDER Upon plea hearing held 10/25/99 as to Jimmy O'Neal Brown; Deft. had previously tendered a guilty plea which the court provisionally accepted pending receipt of a PSIR; after preparation of the report, deft. obtained new counsel and moved to withdraw his guilty plea; 9/27/99, the court permitted deft. to withdraw his guilty plea; a suppression hrg. was held 10/22/99, resulting in the denial of deft.'s mtn. to suppress evidence; subsequently, deft. informed the court that he wished to change his plea to guilty pur. to a written plea agreement; court conditionally accepted deft.'s plea of guilty; court deferred final acceptance of the plea agreement and adjudication of guilt pending receipt of the amended

		PSIR; scheduling Sentencing for 11:00 a.m., 1/10/2000, in BECKLEY, for Jimmy O'Neal Brown ; directing the Probation Dept. to review its PSIR and submit an amended version to this court; remanding the deft. to the custody of the USMS. defendant and counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (slr)
01/10/2000		SENTENCING held (Judge David Faber ; Court Reporter: Teresa Anderson) Jimmy O'Neal Brown, Count 1 (slr) (Entered: 01/11/2000)
01/10/2000	77	WITNESS LIST by Jimmy O'Neal Brown (slr) (Entered: 01/11/2000)
01/10/2000	78	EXHIBIT LIST as to Jimmy O'Neal Brown and USA as to Jimmy O'Neal Brown (**Exhibits attached**) (slr) (Entered: 01/11/2000)
01/13/2000	79	JUDGMENT upon sentencing 1/10/00 Jimmy O'Neal Brown, Count 1: The deft. is committed to the custody of the BOP for a 188 month term of imprisonment; following his of incarceration, deft. shall remain on supervised release for 5 yrs.; deft. is assessed \$100.00 and fined \$5,000.00; deft. was remanded to the custody of the USMS; Sentenced within Guideline Range. (Signed by Judge David Faber) cc: defendant and counsel; USA; USM; USP; Judge (slr) (Entered: 01/14/2000)
01/13/2000	80	MEMORANDUM OF SENTENCING HEARING AND REPORT OF STATEMENT OF REASONS: Upon hearing held 1/10/00 as to Jimmy O'Neal Brown cc: defendant and counsel; USA; USM; USP; Judge (Signed by Judge David Faber) (slr) (Entered: 01/14/2000)
01/13/2000		**CASE CLOSED as to Jimmy O'Neal Brown and Susan Jane Boyd (all defendants). (slr) (Entered: 01/14/2000)
01/14/2000	81	LETTER from Jimmy O'Neal Brown addressed to Clerk of Courts, dated 1/11/00, requesting copies of transcripts. (slr)
01/19/2000	82	NOTICE OF APPEAL by Jimmy O'Neal Brown from judgment order entered 1/13/00 and REQUEST FOR APPOINTMENT OF COUNSEL. (rle)
01/19/2000	83	TRANSMITTED Notice of Appeal to 4CCa as to Jimmy O'Neal Brown (cc: deft, attys) (rle)
01/21/2000	84	ORDER as to Jimmy O'Neal Brown: granting defendant permission to proceed on appeal in forma pauperis. cc: defendant and counsel; USA; Judge (Signed by Judge David Faber) (rle)
01/21/2000	85	TRANSMITTAL of Update to NOA (Pauper status granted) as to Jimmy O'Neal Brown (rle)
01/24/2000	86	SEALED -- PRESENTENCE REPORT. (rle)
02/03/2000	88	NOTICE of Lien for Fine/Restitution as to Jimmy O'Neal Brown issued (orig. and 1). (slr)
02/04/2000	89	ORDER FROM USCA as to Jimmy O'Neal Brown appointing E. Lavoyd Morgan, Jr. as counsel for the appellant. cc: defendant and counsel; USA; USM; USP; Judge () (cds)

02/04/2000	90	NOTICE OF DOCKETING ROA FROM 4CCA as to Jimmy O'Neal Brown Re: [82-1] appeal 4CCA Number: 00-4070 Case Manager: Taline Akseraylian (cds)
03/16/2000	91	LETTER as to Jimmy O'Neal Brown addressed to Clerk, dated 3/14/00, re: REQUEST FOR CERTIFICATE. (rle)
03/16/2000	92	CERTIFICATE by Clerk OF READINESS OF RECORD ON APPEAL as to Jimmy O'Neal Brown re: [82-1] appeal by Jimmy O'Neal Brown in 4CCA no. 00-4070 (rle)
03/16/2000	93	TRANSMITTAL OF UPDATE ITEM: re: Certificate of Readiness as to Jimmy O'Neal Brown (rle)
03/27/2000	94	ACKNOWLEDGMENT by 4CCA as to Jimmy O'Neal Brown for receipt of Certificate of Readiness on 3/22/00. (rle)
04/14/2000	96	TRANSCRIPT ORDER ACKNOWLEDGMENT from 4CCA, Appeal No. 00-4070 as to Jimmy O'Neal Brown , to Teresa Anderson Court Reporter . Transcript due 5/11/00. (rle)
04/14/2000	97	TRANSCRIPT PURCHASE ORDER by Jimmy O'Neal Brown (rle)
04/27/2000	98	REVISED TRANSCRIPT ORDER ACKNOWLEDGMENT from 4CCA, Appeal No. 00-4070 as to Jimmy O'Neal Brown , to Teresa Anderson Court Reporter . Transcript due 5/18/00. (rle)
05/12/2000	99	TRANSCRIPT as to Jimmy O'Neal Brown for Motions Hearing held 10/22/99, before Judge David Faber . Court Reporter: Teresa L. Anderson (slr) (Entered: 05/15/2000)
05/18/2000	100	TRANSCRIPT as to Jimmy O'Neal Brown for Disposition Hearing held 1/10/00, before Judge David Faber. Court Reporter: Teresa Anderson (mjp)
07/07/2000	102	LETTER as to Jimmy O'Neal Brown addressed to Clerk, USDC, dated 7/3/00, Requesting Supplemental Certificate of Readiness. (cds)
07/07/2000	103	SUPPLEMENTAL CERTIFICATE by Clerk OF READINESS OF RECORD ON APPEAL as to Jimmy O'Neal Brown re: [82-1] appeal by Jimmy O'Neal in 4CCA no. 00-4070 (cds)
07/07/2000	104	TRANSMITTAL OF SUPPLEMENTAL CERTIFICATE OF READINESS to US Court of Appeals. cc: deft., counsel (cds)
07/17/2000	105	ACKNOWLEDGMENT of Receipt of Supplemental Certificate as to Jimmy O'Neal Brown by 4CCA on 7/13/00. (slr)
09/12/2000		CLERKS NOTICE certifying and transmitting Certified Copies of Documents 72-76 (Volume 1) to Fourth Circuit Court of Appeals as to Jimmy O'Neal Brown ; [82-1] appeal 4CCA #: 00-4070 (Documents mailed per request of Julie Hall) (cds)
09/18/2000		ACKNOWLEDGMENT FROM USCA OF RECEIPT OF CERTIFIED COPIES OF DOCUMENTS 72-76 as to Jimmy O'Neal Brown (cds)

		(Entered: 12/12/2000)
10/06/2000	106	MOTION by Jimmy O'Neal Brown for Retesting of Drug-Related Evidence (slr)
10/23/2000	107	OPINION, 4CCA No. 00-4070, as to Jimmy O'Neal Brown, DISMISSING the Appeal (slr)
11/16/2000		Record on Appeal returned from U.S. Court of Appeals: [82-1] appeal in one volume of pleadings. (rle)
11/17/2000	108	JUDGMENT OF 4CCA (certified copy) as to Jimmy O'Neal Brown Re: [103-1] appeal, [92-1] appeal dismissing the appeal (rle)
02/06/2001	110	LETTER as to Jimmy O'Neal Brown from USA addressed to Ronald D. Lawson, dated 1/2/01, re: Special Assessment paid in full; US Atty's record closed (slr) (Entered: 02/07/2001)
03/01/2001	111	LETTER as to Jimmy O'Neal Brown addressed to Clerk of Court, dated 2/22/01, re: Request for transcript and and updated docket sheet (copy of letter forwarded to Teresa Anderson). (rle)
05/14/2001	112	MOTION by Jimmy O'Neal Brown under 28 U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. (Civil Action No: 5:01-0410) (slr)
05/14/2001	113	STANDING ORDER ENTERED MAY 7, 1999: (1) All Applications to proceed in forma pauperis in civil cases are referred to the Magistrate Judge for consideration pursuant to Title 28, United States Code, Section 636; the Clerk, upon written Order from the Magistrate Judge, shall return any deficient document as specified in the Order if there is a deficiency in accordance with the statute; (2) all civil actions filed by persons who are in custody and all civil actions by persons who are not incarcerated but which are filed pro se pursuant to Title 42, United States Code, Section 1983, Title 28, United States Code, Sections 2255, 2254, and 2241, or other federal statutes and all civil actions for judicial review of administrative determination under the Social Security Act are referred to the Magistrate Judge pursuant to Title 28, United States Code, Section 636; (3) all applications for an award of attorneys' fees from judicial review of administrative decisions under the Social Security Act and all applications for fees and other expenses under the Equal Access to Justice Act, Title 28, United States Code, Section 2412 (d), are referred to the Magistrate Judge. THIS CASE REFERRED as to Jimmy O'Neal Brown to Magistrate Judge Mary S. Feinberg (cc: attys, pro se parties, USM, USP, District Judge, Mag. Judge) (slr)
05/14/2001	114	NOTICE of Filing of 2255 Motion by Jimmy O'Neal Brown (cc: Judge Faber; Charles T. Miler, US Attorney; deft.) (slr)
06/05/2001	115	MOTION by Jimmy O'Neal Brown to Amend and Enlarge The Scope of his [112-1] motion under 28 U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody. (Civil Action No: 5:01-0410) (cds)

06/25/2001	116	ORDER as to Jimmy O'Neal Brown granting [115-1] motion to Amend and Enlarge The Scope of his [112-1] motion under 28 U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody; the additional material offered by Movant is incorporated in his Motion (Civil Action No: 5:01-0410) cc: defendant and USA (Signed by Magistrate Judge Mary S. Feinberg) (slr)
07/24/2001	117	PROPOSED FINDINGS AND RECOMMENDATIONS of Magistrate Judge Mary S. Feinberg as to Jimmy O'Neal Brown Re: [112-1] motion under 28 U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by Person in Federal Custody. (Civil Action No: 5:01-0410). Proposing that the District Court find that Defendant's Motion and the files and records of the case conclusively show that Defendant is not entitled to relief and that an evidentiary hearing is not required. Recommending that the District Court deny Defendant's 2255 Motion, order its summary dismissal and cause Defendant to be notified. Motion no longer referred. Objections to F and R due by 8/10/01 (rle)
07/31/2001	118	REQUEST FOR STATUS REPORT by Jimmy O'Neal Brown (rle)
08/13/2001	119	SUPPORTING BRIEF AND OBJECTIONS by Jimmy O'Neal Brown to [117-1] Proposed Findings and Recommendations by Magistrate Judge Feinberg (slr)
10/19/2001	120	REQUEST by Jimmy O'Neal Brown for Status Report (slr)
10/19/2001		NOTE TO FILE: Forwarded copy of current docket sheet as to Jimmy O'Neal Brown, pursuant to def't.'s letter request for status report (slr)
11/06/2001	121	PRO SE MOTION by Jimmy O'Neal Brown to Compel Judgment on Motion for Re-Test (slr)
11/20/2001	122	GRAND JURY RETURN ORDER as to Jimmy O'Neal Brown, Susan Jane Boyd; Grand Jury No. 97-1 returned indictments 10/21/98. (signed by Magistrate Judge Jerry D. Hogg) (pdb)
01/09/2002	123	Copy of LETTER from 4CCA addressed to Jimmy O'Neal Brown, dated 1/7/02, re: failure of compliance w/rule 21 when filing his Writ of Mandamus. (rle)
01/14/2002	124	STANDING ORDER IN RE: REFERRAL OF CIVIL ACTION MATTERS TO MAGISTRATE JUDGES ENTERED DECEMBER 28, 2001, NUNC PRO TUNC DECEMBER 26, 2001: Pursuant to 28 USC 636, certain types of civil actions and certain types of motions in civil cases shall be referred to the divisions as follows: For Beckley and Bluefield, to Magistrate Judge R. Clarke VanDervort; for Charleston and Parkersburg, to Magistrate Judge Mary E. Stanley; for Huntington, to Magistrate Judge Maurice G. Taylor, Jr.; the types of motions referred in all civil actions are: (1) applications to proceed in forma pauperis; (2) discovery disputes; and (3) discovery issues that arise post-judgment, such as interrogatories in aid of execution, judgment debtor examinations, and motions to compel answers to suggestions; the types of civil actions referred for total pretrial management and/or proposed

		findings of fact and recommendations for disposition are: (1) Actions for judicial review of an administrative determination under the Social Security Act, including applications for award of attorneys' fees and expenses under the Social Security Act or the Equal Access to Justice Act; and (2) Actions filed by persons proceeding pro se, whether in custody or not, until such person is represented by counsel; this order supersedes prior standing orders and referral orders in pending cases, but prior rulings made thereunder remain the law of the particular case. THIS CASE REFERRED TO Magistrate Judge R. Clarke VanDervort. (cc: attys; any unrepresented party) (gan)
04/25/2002	<u>125</u>	MOTION by Jimmy O'Neal Brown for the Court to Take Judicial Notice (rle)
06/03/2002	<u>126</u>	MOTION by Jimmy O'Neal Brown to Supplement Pending [112-1] Motion under 28 U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by Person in Federal Custody. (Civil Action No: 5:01-0410) (slr)
06/21/2002	<u>127</u>	Copy of ORDER (4CCA) as to Jimmy O'Neal Brown: denying appellant's petition for rehearing and rehearing en banc. (rle)
01/02/2003	<u>128</u>	TRANSCRIPT as to Jimmy O'Neal Brown for Plea Hearing held 10/25/99, before Judge David Faber . Court Reporter: Teresa Anderson (rle) (Entered: 01/03/2003)
02/19/2003	<u>129</u>	LETTER from Jimmy O'Neal Brown addressed to Clerk, U. S. District Court, dated 2/13/03, re: Status of Motion to Retest Drugs. (slr)
02/19/2003		NOTE TO FILE: Mailed current copy of docket sheet as to Jimmy O'Neal Brown to Deft. pursuant to letter request. (slr)
03/06/2003		COURT PROCEEDING - Initial Appearance on Revocation Petition; JUDGE VanDervort; COURT REPORTER Electronic (slr)
03/11/2003		COURT PROCEEDING PRELIMINARY/DETENTION HEARING; JUDGE VanDervort; COURT REPORTER Electronic (slr)
01/08/2004	<u>146</u>	LETTER from Jimmy O'Neal Brown addressed to Clerk, U. S. District Court, Requesting Status of 2255 and Requesting Copy of Docket Sheet. (slr)
01/08/2004		NOTE TO FILE: Copy of docket sheet forwarded to Jimmy O'Neal Brown (slr)
01/13/2004	<u>147</u>	ORDER as to Jimmy O'Neal Brown denying as moot [121-1] Motion to Compel Judgment on Motion for Re-Test; denying as moot [125-1] Motion for the Court to Take Judicial Notice; denying [126-1] Motion to Supplement Pending [112-1] Motion under U.S.C. 2255 to Vacate, Set Aside or Correct Sentence by Person in Federal Custody. (Civil Action No: 5:01-0410) cc: defendant; USA; Judge (Signed by Magistrate Judge VanDervort) (slr)
03/08/2004	<u>148</u>	MOTION by Jimmy O'Neal Brown to Vacate [79-1] Judgment Order and to Correct Sentence (slr)

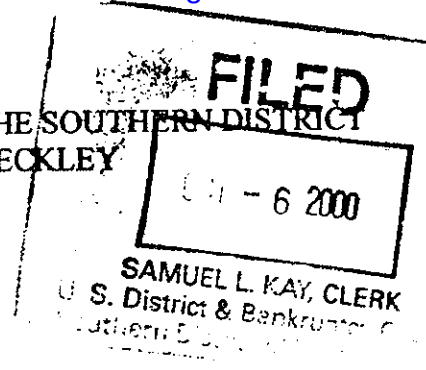
03/08/2004		NOTE TO FILE: Forwarded copy of docket sheet to Jimmy O'Neal Brown, pursuant to letter request. (slr)
03/18/2004	<u>149</u>	MOTION by Jimmy O'Neal Brown to Decline Magistrate (slr)
05/13/2004	● <u>151</u>	PROPOSED FINDINGS AND RECOMMENDATIONS recommending that the District Court deny/dismiss Movant's [112] Motion Under 2255 to Vacate, Set Aside or Correct his Sentence, and Movant's <u>148</u> Motion to Vacate, Set Aside or Correct his Sentence and remove this matter from the Court's docket. Objections to PF&R due by 5/28/2004. Signed by Judge R. Clarke VanDervort on 5/12/2004. (cc: Judge, USA, deft) (slr)
05/24/2004	● <u>152</u>	MOTION by Jimmy O'Neal Brown for Leave to File Amended Complaint (slr)
05/24/2004	● <u>153</u>	(AMENDED) MOTION by Jimmy O'Neal Brown to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody pursuant to Title 28, United States Code, Section 2255. Cross Reference Civil Case Number 5:01-410. (slr)
05/24/2004	● <u>154</u>	MEMORANDUM & AUTHORITIES IN SUPPORT of Amended <u>153</u> Motion to Vacate, Set Aside or Correct Sentence (2255), filed by Jimmy O. Brown
05/26/2004	● <u>155</u>	OBJECTIONS TO MAGISTRATE'S PROPOSED FINDINGS AND RECOMENDATIONS [117] by Jimmy O'Neal Brown (cds)
05/28/2004	● <u>156</u>	COPY OF 4CCA JUDGMENT in 4CCA Case No. 03-7754. A certified copy of this judgment will be provided to the district court upon issuance of the mandate. This judgment will not take effect until issuance of the mandate. (cds)
06/01/2004	● <u>157</u>	ORDER finding that (1) the Movant's guilty plea to the offense for which he is currently serving a 188-month term of incarceration constituted an admission of the offense's essential elements, including the identity and quantity of the controlled substances; (2) that the irregularities at the WV State Police Laboratory do not constitute a fair and just reason for withdrawal of his plea; (3) that none of the movant's allegations suggest that his guilty plea was not knowing and voluntary; (4) that any irregularity in the grand jury proceedings did not prejudice him; (5) that movant's counsel was not ineffective for failing to challenge lab reports, which were presented to the grand jury when it indicted him; (6) that the movant's ineffective assistance of counsel based on Apprendi v. New Jersey is without merit; (7) that the movant's files and records of the case conclusively show that he is not entitled to relief and (8) that the movant's files and records of the case conclusively show that an evidentiary hearing is not required; denying and dismissing movant's [112] 2255 Motion. Signed by Chief Judge David A. Faber on 6/1/2004. (cc: Judge, USA, USP, USM, counsel, deft) (slr)
06/14/2004	● <u>158</u>	MOTION by Jimmy O'Neal Brown for Retesting Drug-Related Evidence (rle)

06/21/2004	● <u>159</u>	LETTER from 4CCA, dated 06/17/04, re: a petition for Rehearing has been filed and a timely petition for rehearing en banc has been filed in 4CCA Case No. 03-7754 as to Jimmy O'Neal Brown. (tmr)
06/22/2004	● <u>160</u>	PETITION for Panel Reconsideration and/or Suggestion for Rehearing En-Banc as to Jimmy O'Neal Brown (Appeal No. 03-7754) (**Copy mailed to USCA, 4th Circuit)
06/28/2004	● <u>161</u>	LETTER to Clerk of Court, from Jimmy O. Brown dated 6/9/2004, re: Requesting Copy of Local Rules (**Forwarded copy of Local Rules to Jimmy O. Brown**)
08/05/2004	● <u>162</u>	NOTICE OF APPEAL (Interlocutory) by Jimmy O'Neal Brown re <u>157</u> Order entered 6/1/04. (slr)
08/05/2004	● <u>163</u>	MOTION by Jimmy O'Neal Brown and Affidavit for Leave to Proceed in Forma Pauperis Pursuant to Title 28 U.S.C. Section 1915 (slr)
08/05/2004	● <u>164</u>	MOTION by Jimmy O'Neal Brown Requesting Certificate of Appealability Pursuant to Title 28 U.S.C. Section 2253 (slr)
08/05/2004	● <u>165</u>	NOTICE OF APPELLATE ACTION - TRANSMITTING NOTICE OF APPEAL AND DOCKET SHEET TO 4CCA as to Jimmy O'Neal Brown re: <u>162</u> Notice of Appeal - Interlocutory. (slr)
08/09/2004	● <u>166</u>	ORDER OF 4CCA as to [82] Notice of Appeal ON PETITION FOR REHEARING AND REHEARING EN BANC in 4CCA Case No. 03-7754: denying the Petition for rehearing and rehearing en banc. (slr)
08/20/2004	● <u>167</u>	NOTICE OF APPELLATE ACTION RECEIVED as to Jimmy O'Neal Brown re: <u>162</u> Notice of Appeal - Interlocutory. 4CCA Case Number: 04-7297. 4CCA Case Manager: S. J. Beasley. (slr)
08/20/2004	● <u>168</u>	LETTER from 4CCA dated 8/17/2004, requesting transmittal of ROA in 4CCA Case Number 04-7297. (**Letter states that, if the District Court requires the record for the purposes of ruling on pending motion, record should be forwarded to USCA immediately after resolution of motion(s) **) (slr)
09/28/2004	● <u>169</u>	ORDER: finding that Movant's claims that the Government breached its promise and his attorney was ineffective for filing to pursue the matter are without merit; denying Movant Jimmy O'Neal Brown's <u>152</u> Motion for Leave to File Amended Complaint. Signed by Judge R. Clarke VanDervort on 9/27/2004. (cc: Judge, USA, USP, USM, counsel, deft) (rle)
10/18/2004	● <u>170</u>	MOTION by Jimmy O'Neal Brown to Compel Performance (cds)
11/05/2004	● <u>171</u>	LETTER to USDC, from USCA dated 11/2/2004, re: Seeking information re: Appellant's application for leave to proceed on appeal in forma pauperis
01/13/2005	● <u>172</u>	LETTER to Clerk of Court, from Shirley Beasley, Case Manager dated 1/10/2005, Requesting to be advised when action will be taken on

		appellant's motion for leave to proceed on appeal IFP
01/24/2005	● <u>173</u>	ORDER: Jimmy O'Neal Brown will not be permitted to proceed on appeal in forma pauperis . Signed by Judge David A. Faber on 1/24/2005. (cc: Judge, USA, USP, USM, counsel, deft) (cds)
01/24/2005	● <u>174</u>	ORDER denying <u>163</u> Motion for Leave to Proceed on Appeal in Forma Pauperis as to Jimmy O'Neal Brown (1). Signed by Judge David A. Faber on 1/24/2005. (cc: Judge, USA, USP, USM, counsel, deft) (cds)
01/24/2005	● <u>175</u>	UPDATE TO NOTICE OF APPELLATE ACTION as to Jimmy O'Neal Brown re: ORDER DENYING IFP STATUS in 4CCA Case No. 04-7297. (cds)
01/31/2005	● <u>176</u>	NOTICE OF APPELLATE ACTION BY 4CCA ACKNOWLEDGING RECEIPT OF UPDATE ITEM on 1/28/05, re: Order denying IFP status in 4CCA Case No. 04-7297 as to Jimmy O'Neal Brown. (rle)
01/31/2005	● <u>177</u>	LETTER to Jimmy O'Neal Brown, from 4CCA dated 1/26/2005, re: payment of filing fee and/or application to proceed IFP Modified on 2/10/2005 (Staples, Cassandra).
02/09/2005	● <u>178</u>	MOTION by Jimmy O'Neal Brown for Reconsideration and/or to Alter or Amend Judgment Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure (cds) (Entered: 02/10/2005)
02/14/2005	● <u>179</u>	LETTER from 4CCA dated 2/8/2005, requesting transmittal of ROA in 4CCA Case Number 04-7297. (rle)
02/15/2005	● <u>180</u>	NOTICE OF APPELLATE ACTION - CERTIFIED AND TRANSMITTED RECORD ON APPEAL as to Jimmy O'Neal Brown TO 4CCA re: <u>162</u> Notice of Appeal - Interlocutory. (11 volumes). (rle)
02/22/2005	● <u>181</u>	NOTICE OF APPELLATE ACTION BY 4CCA ACKNOWLEDGING RECEIPT OF RECORD ON APPEAL on 2/17/05 in 4CCA Case No. 04-7297 as to Jimmy O'Neal Brown. (rle)
02/25/2005	● <u>182</u>	LETTER to Jimmy O'Neal Brown, from 4CCA dated 2/22/2005, re: docket fee for filing petition for a writ of mandamus, payment to be made to Clerk, US Court of Appeals
02/25/2005	● <u>183</u>	LETTER to Jimmy O'Neal Brown, from 4CCA dated 2/22/2005, re: non-compliance with Rule 21 of FRaP (proof of service of writ of mandamus on trial court judge)
02/28/2005	● <u>184</u>	Copy of Defendant Jimmy O'Neal Brown's Motion for Writ of Mandamus pursuant to 28 USC 1651, filed with the Fourth Circuit Court of Appeals.
06/30/2005	● <u>186</u>	COURTESY COPY OF OPINION OF 4CCA re: <u>162</u> Notice of Appeal in 4CCA Case No. 04-7297. (rle)
06/30/2005	● <u>187</u>	COPY OF 4CCA JUDGMENT in 4CCA Case No. 04-7297: granting a certificate of appealability, vacating and remanding the judgment of the District Court. A certified copy of this judgment will be provided to the

		district court upon issuance of the mandate. This judgment will not take effect until issuance of the mandate. (rle)
08/23/2005	● <u>188</u>	JUDGMENT/MANDATE OF 4CCA (CERTIFIED COPY) as to Jimmy O'Neal Brown re <u>162</u> Notice of Appeal - Interlocutory. (Attachments: # 1) (cds)
08/23/2005	● <u>189</u>	LETTER FROM 4CCA RETURNING APPEAL RECORD in 11 Volumes as to Jimmy O'Neal Brown re: <u>162</u> Notice of Appeal. (cds)
09/02/2005	● <u>190</u>	MOTION by Jimmy O'Neal Brown to Amend <u>119</u> Supporting Brief and Objections to Proposed Findings and Recommendations, and REQUEST to have Government forward results of its retest of drug evidence to Defendant. (rle)
09/29/2005	● <u>202</u>	MEMORANDUM OPINION AND ORDER: Petitioner's objections to the PF&R are overruled; 2255 Motion is dismissed; Petitioner's motion to vacate judgment order and correct sentence dismissed; Petitioner's motion to amend supporting brief and objections denied. Clerk is directed to strike this case from the active docket of the court. Signed by Judge David A. Faber on 9/29/2005. (cc: Judge, USA, USP, USM, counsel, deft) (rle)
11/21/2005	● <u>206</u>	NOTICE OF APPEAL by Jimmy O'Neal Brown (cds)
11/21/2005	● <u>207</u>	MOTION and AFFIDAVIT by Jimmy O'Neal Brown for Leave to Appeal In Forma Pauperis Pursuant to Title 28 USC 1915. (cds)
11/21/2005	● <u>208</u>	MOTION by Jimmy O'Neal Brown Requesting Certificate of Appealability Pursuant to Title 28 USC 2253. (cds)
11/21/2005	● <u>209</u>	NOTICE OF APPELLATE ACTION - TRANSMITTING NOTICE OF APPEAL AND DOCKET SHEET TO 4CCA as to Jimmy O'Neal Brown re: <u>206</u> Notice of Appeal (cds)
11/29/2005	● <u>210</u>	ORDER: Directing that Jimmy O'Neal Brown, may proceed on appeal in forma pauperis . Signed by Judge David A. Faber on 11/29/2005. (cc: Judge, USA, USP, USM, counsel, deft) (cds)
11/30/2005	● <u>211</u>	UPDATE TO NOTICE OF APPELLATE ACTION as to Jimmy O'Neal Brown re: TRANSMITTING ORDER GRANTING IFP STATUS. (cds)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF WEST VIRGINIA AT BECKLEY



UNITED STATES OF AMERICA,

PLAINTIFF.

VS.

DISTRICT COURT NO. 5:98-00189-01

JIMMY O'NEAL BROWN,

DEFENDANT.

MOTION FOR RETESTING OF DRUG-RELATED EVIDENCE

COMES NOW the Defendant, Jimmy O'Neal Brown, by and through his counsel, E. Lavoyd Morgan, Jr., and moves this Honorable Court to Order that all drug-related evidence previously offered against him be retested by an independent laboratory. In support of his Motion, defendant states the following:

1. Defendant was previously before this Court pursuant to his being charged with Aiding and Abetting the Knowing and Intentional Possession with Intent to Distribute Methamphetamine and Cocaine. On October 25, 1999, Defendant, entered a plea of guilty and was subsequently sentenced on January 10, 2000 to a term of 188 months;
2. The drug evidence offered against Defendant had been tested by West Virginia State Police Forensic Laboratory;
3. By letter dated August 15, 2000, defendant was advised that the United States has received evidence of certain irregularities and the

E. LAVOYD MORGAN, JR.
ATTORNEY AT LAW
PO BOX 1847
LEWISBURG, WV 24901

Exhibit

B

Docket # 106

106

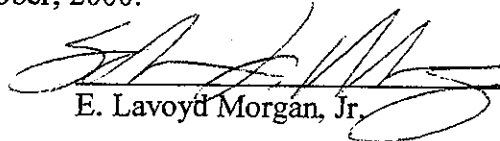
CERTIFICATE OF SERVICE

I, E. Lavoyd Morgan, Jr., does hereby certify that service of the
attached Motion for Retesting of Drug-Related Evidence was made upon
the State of West Virginia by mailing a true and correct copy in the U.S.

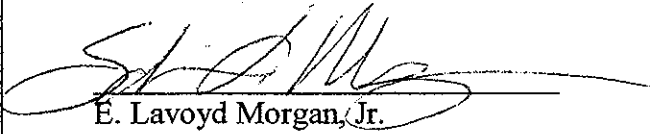
Mail, postage prepaid and properly addressed to:

Miller A. Bushong, III
Assistant United States Attorney
P.O. Box 1713
Charleston, West Virginia 25301

This 5th day of October, 2000.


E. Lavoyd Morgan, Jr.

Prepared by:



E. Lavoyd Morgan, Jr.
Counsel for Defendant
(304)645-7120
West Virginia State Bar No. 6938

Approved by:

Miller A. Bushong, III
Assistant United States Attorney
P.O. Box 1713
Charleston, West Virginia 25301



Case 5:98-cr-00189 Document 170 Filed 10/18/2004 Page 4 of 5
U. S. Department of Justice

United States Attorney
Southern District of West Virginia

September 15, 2000

E. Lavoyd Morgan, Jr., Esquire
Post Office Box 388
Lewisburg, West Virginia 24901

United States Courthouse

300 Virginia Street, E.

Room 4000

Charleston, West Virginia 25301

FAX: (304) 247-5104

Mailing Address:

Post Office Box 1713

Charleston, West Virginia 25326-1713

(304) 345-2200

1-800-659-8726

Re: United States v. Jimmy O'Neal Brown
Appeal No. 00-4070

Dear Mr. Morgan:

This is to advise you that the United States has received evidence of certain irregularities in the process in which drug-related evidence has been tested and analyzed by the Drug Section of the West Virginia State Police Forensic Laboratory. An investigation of these irregularities is ongoing.

In light of this evidence, and to assure there is no miscarriage of justice, the United States is undertaking efforts to have any drug-related evidence offered or to be offered against a defendant to be retested by a laboratory independent of the West Virginia State Police Lab.

The defendant may of course stipulate to the drugs in the case and forego the need for such retesting. Absent such a stipulation, however, the United States will proceed with retesting.

The United States wanted you to be apprised of this development as soon as possible so that you can appropriately represent your client.

If you wish to discuss the specifics of your case, please contact the Assistant United States Attorney handling your case.

Very truly yours,

REBECCA A. BETTS
United States Attorney

RAB:JLF/ljw

Exhibit

C



U. S. Department of Justice

United States Attorney
Southern District of West Virginia

October 31, 2000

United States Courthouse

300 Virginia Street, E.

Room 4000

Charleston, West Virginia 25301

FAX: (304) 347-5104

Mailing Address:

Post Office Box 1713

Charleston, West Virginia 25326-1713

(304) 345-2200

1-800-659-8726

E. Lavoyd Morgan, Jr., Esquire
Post Office Box 1847
Lewisburg, West Virginia 24901

Re: United States v. Jimmy O'Neal Brown
Criminal No. 5:98-00189-01

Dear Mr. Morgan:

I am in receipt of your letter to Miller Bushong in our office. We intend to have the drugs retested by the DEA. If that does not suffice, I will not object to your having them retested privately under appropriate security conditions.

Please call me at your convenience to discuss this. Thank you for your cooperation.

Very truly yours,

REBECCA A. BETTS
United States Attorney

By:

John L. File
JOHN L. FILE
Assistant United States Attorney

JLF/ljw





U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

March 11, 2004

Mr. Jimmy O. Brown
**05742-088/BB
Post Office Box 699
Estill, SC 29918-0699

Dear Mr. Brown:

A copy of your letter asking for information maintained by the FBI under the Freedom of Information Act (FOIA) concerning other individuals is being returned to you.

Before we commence processing your request for records pertaining to other individuals, we ask that you submit to the FBI either proof of death or a privacy waiver from these people. Proof of death can be a copy of a death certificate, obituary or a recognized reference source. Death is presumed if the birth date of the subject is more than 100 years ago. Without proof of death or a privacy waiver, the disclosure of law enforcement records or information about another person is considered an unwarranted invasion of personal privacy. Such records, if they exist, are exempt from disclosure pursuant to Exemptions (b)(6) and/or (b)(7)(C) of the FOIA, Title 5, United States Code, Section 552.

Enclosed is a Privacy Waiver and Certification of Identity form. (You may make extra copies) The subjects of your request should complete the form and then sign it, preferably in the presence of a notary. Please note that mail addressed to the FBI is delayed several weeks due to increased security procedures now in place. You may fax your response directly to the RID Section at 202-324-3752.

In order to ensure an accurate search of our records, please provide your subjects complete name, date of birth and place of birth.

Once you have provided us with the necessary information, as described above, we will conduct a search of our records and advise you of the results.

This response should not be considered an indication of whether or not records responsive to your request exist in FBI files.

EXhibit
D

Sincerely yours,

David M. Hardy/W

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosures (2)

JIMMY O. BROWN
05742-088/BB
P.O. BOX 699
ESTILL, SC 29918-0699

March 1, 2004

Federal Bureau of Investigations
Freedom Of Information/Privacy Act Dept.
J. Edgar Hoover Bldg.
935 Pennsylvania Ave.
NW, Washington, DC 20534

Re: Freedom of Information/Privacy Act

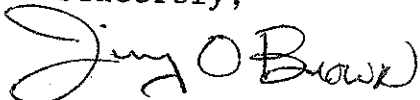
Dear FOI/PA Coordinator:

I am requesting, pursuant to 28 CFR § 16 et., seq. and the Freedom of Information/Privacy Act, 5 U.S.C. § 552a, the production of the following records.

1. In 2000, lab officials of the West Virginia State Police Laboratory were investigated by the Federal Bureau of Investigation for skipping tests and ignoring procedures that resulted in inaccurate lab findings. A FBI report was issued with regards to this investigation. I am seeking a copy of this report and its accompanying individual investigations.
2. Based on the above, please provide any records concerning retesting, the identity and the nature of the discrepancies related to individual tests.

Pursuant to § 16.5, I am requesting that your officer respond to this FOI/PA request within the allocated ten day period. And, as such, your prompt cooperation in this matter will be most appreciated.

Sincerely,



Jimmy O. Brown

JB/js

cc: personal files

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

JIMMY O. BROWN,

Movant,

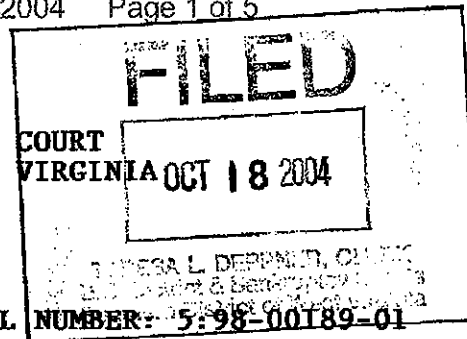
v.

UNITED STATES OF AMERICA,

Respondent.

CRIMINAL

MOTION TO COMPELL PERFORMANCE



COMES NOW the movant, Jimmy O. Brown, in propria persona, in the above entitled cause, and hereby moves this Honorable Court to issue an Order compelling the United States to performance. As good grounds in support of his motion, movant would show:

1. In a letter dated September 15, 2000, by United States Attorney Rebecca A. Betts, movant was advised that "to assure there is no miscarriage of justice, the United States is undertaking efforts to have any drug-related evidence offered or to be offered against a defendant to be retested by a laboratory independent of the West Virginia State Police Lab." (See Exhibit "A")

2. This letter occurred as a result of the United States receiving "evidence of certain irregularities in the process in which drug-related evidence ha[d] been tested and analyzed by the Drug Section of the West Virginia State Police Forensic Laboratory".

3. The United States qualified that movant "may of course stipulate to the drugs in the case and forego the need for such retesting. Absent such a stipulation, however, [the United States asserted] that [it would] proceed with retesting."

4. Movant did not stipulate to the drugs. In fact, movant's attorney contacted Assistant U.S. Attorney Miller Bushong, to have

Exhibit
E

the retest conducted, and filed a motion for that purpose.

5. In a letter dated October 31, 2000, movant's attorney was advised by Assistant U.S. Attorney John L. File, of the United States' intent "to have the drugs retested by the DEA". (See Exhibit "B")

6. The United States went on to state that if the retesting by the DEA "d[id] not suffice, [the United States would] not object to [] having them retested privately under appropriate security conditions".

7. Once again, movant did not contest the retesting.

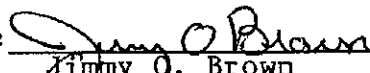
8. It is movant's pistion that on two (2) separate occassions the United States has stated that, to insure there is no miscarriage of justice, it was going to have the drugs used in movant's case retested, and they have not done so.

9. Movant asserts that it is in the interests of justice and appearance of fairness to have the drug-related evidence of this case retested, and that since the United States has failed to perform the retest as stated, this Court should compell them to perform in the manner they have said they would, and provide movant with a copy of the retest results.

WHEREFORE, for good grounds shown, movant respectfully requests that this Honorable Court issue an Order directing the United States to conduct a retest on the drug-related evidence offered and used against the movant and to provide movant with a copy of the results.

Respectfully submitted this 14th day of October, 2004.

By:


Jimmy Q. Brown

C E R T I F I C A T E O F S E R V I C E

This is to certify that the undersigned has this date served the foregoing **MOTION TO COMPELL PERFORMANCE** in the above-captioned action upon all other parties to this cause by depositing a copy hereof in a postpaid wrapped in FCI Estill's official legal depository addressed as follows:

ADDRESSEE(S):

OFFICE OF THE U.S. ATTORNEY
P.O. Box 1713
CHARLESTON, WV 25326-1713

This 14th day of October, 2004.


Jimmy P. Brown